

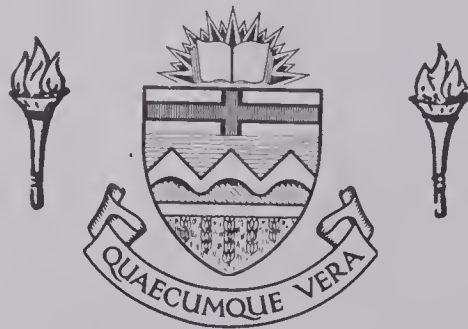
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FEDERALISM IN PAKISTAN:

A STUDY OF THE DIVISION OF POWERS

by



MEHRUNNISA ALI

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES

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The undersigned certify that they have read,
and recommend to the Faculty of Graduate Studies for
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A Study of the Division of Powers," submitted by
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ments for the degree of Master of Arts.

ABSTRACT

The purpose of this thesis is to examine the nature of federal government in Pakistan as established in 1947 and continued until 1958. The thesis examines federalism as it evolved and was influenced by interplay of the divergent forces of integration and separation.

Federalism in Pakistan may be considered a compromise between the conflicting desires for union and separation which was the product of historical, geographical, cultural and linguistic, religious and military factors. These conflicting factors, in varying degrees, continued to exert pressure on the working of the federal system. Despite the strong regional pressures, general fear of Indian domination and a sense of Islamic solidarity proved strong enough to preserve the national integration.

Federalism essentially implies a distribution of authority between one general and several regional governments. Powers are so divided and the sphere of each government is so specified by the constitution as to ensure that neither level of government is subordinate

to the other. The subordination of regional government to the general government would be a violation of the federal principle. The analysis of central-provincial relations shows that the federal principle was only partially incorporated in the constitution. Frequent central interference in provincial affairs, through direct and indirect means, resort to emergency provisions, financial dependence of the provinces and central predominance in the administrative field undermined the federal principle. The conclusion has been reached that a highly centralized government was at work during the period 1947-58. The provinces were subordinate to rather than co-ordinate with the central government, as such the government under the interim constitution and the constitution of 1956 was 'quasi-federal' in theory and practice.

ACKNOWLEDGEMENT

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INTRODUCTION

"The epoch of federalism is over,"¹ declared Harold Laski in 1939, in an article entitled "The Obsolescence of Federalism". He suggested that federal government, in its traditional form, with its compartmentalizing of functions, rigidity and inherent conservatism was unable to keep pace with the tempo of life that giant capitalism had evolved. Decentralized unitary government was, he concluded, more appropriate in the conditions of the mid-twentieth century. Speaking generally about the problems posed by and inherent in federalism, Sir Ivor Jennings declared that "no body would have a federal constitution if it could possibly avoid it."² Lord Bryce simply dismissed federalism as little more than a transitory step on the way to governmental unity.³ Dicey denounced federal government due to its inherent weakness which springs from the division of powers be-

¹H. J. Laski, The New Republic, No. 98, XCVIII (1939), p. 367.

²I. Jennings, Some Characteristics of the Indian Constitution, Madras: New York, Indian Branch, Oxford University Press, 1953, p. 55.

³See Edward McWhinney, Comparative Federalism, 2nd ed., Toronto: University of Toronto Press, 1965, Ch. 1.

tween the central government and the states.⁴ F. G. Carnell rejects federal systems as "relics of horse and buggy days".⁵ He considers it the last form of government which should be contemplated by the peoples of underdeveloped countries.⁶ K. C. Wheare recognized, in 1945, that the concentration of central powers in existing federations, which was the result of economic crises and war, was threatening the federal principle.⁷

Despite these criticisms, federalism survived not only as a political system but gained popularity in the developing nations, as is shown by its adoption in countries such as Pakistan, India, Nigeria and Malaya. This fact led M. Beloff to assert, in 1953, that federation was enjoying "a widespread popularity such as it had never known before".⁸ Federalism in Asia and Africa

⁴A. V. Dicey, Introduction to the Study of the Law of the Constitution, 10th ed., London: MacMillan, 1964, Ch. III, especially pp. 171-175.

⁵F. G. Carnell, "Political Implications of Federalism in New States" in U. K. Hicks (ed.), Federalism and Economic Growth in the Underdeveloped Countries, London: George Allen & Unwin Ltd., 1961, p. 47.

⁶Ibid.

⁷K. C. Wheare, Federal Government, 1st ed., Oxford: Oxford University Press, 1946, Ch. 12. All subsequent page references are to the fourth edition, 1963.

⁸M. Beloff, 'The "Federal Solution" in its Application to Europe, Asia and Africa,' Political Studies, Vol. I (1953), p. 114.

has been thought of as a solution to the political problems of countries which have previously been held together by external imperial rule.⁹

The British government, in 1935, introduced a highly centralized federalism in the sub-continent to solve the political problems of India. But the reluctance of the Indian princes to join the federation and the Congress and the League's opposition to the federal provisions proved a great hindrance to the workings of the imperial federation. Hindu-Muslim differences proved too sharp to be contained in an All-Indian federation. Subsequently, the British government had to concede to the demands for partition. Pakistan, after independence, retained the federal scheme of 1935 because of the prevailing forces of integration and separation. The Federal system in Pakistan may be considered a device to accommodate the conflicting pressures of unity and diversity which were present at partition and continue to exist. An attempt will be made to discuss the conditions and factors which influenced and determined the choice and workings of the federal system in Pakistan.

Wheare considers federal government appropriate for that group of states or communities which desire to

⁹Ibid., p. 122.

be united under a general government for some purpose and to be organized under regional governments for others.¹⁰ This desire for unity and diversity, according to Watts, existed in all new federations in the Commonwealth. There was a geographical distribution, to some degree, of the diversities within each of these societies, which resulted in the demands for regional autonomy. At the same time, in each of these recent federations, a desire existed within the country to be united for certain purposes, because of a community of outlook or the hope of economic benefits from union.¹¹ This desire for union was further accentuated by the strong urge for swift economic advancement. Since the new federations were economically underdeveloped at the time of their inception, they needed a political system capable of achieving rapid economic growth. To them federalism was the only viable form of government. In India, for example, the problem was one of consolidating a country which was large in population and whose regional components differed in size, resources, language and culture. The Constituent Assembly of India rejected a unitary constitution as a

¹⁰Wheare, op. cit., p. 36.

¹¹R. L. Watts, New Federations: Experiments in the Commonwealth, Oxford: Oxford University Press. 1966, p. 93.

"retrograde step" in such a vast, populous and variegated country, and insisted that the soundest framework for the constitution was a federation with a strong centre.¹²

The Federal system in Pakistan appeared to be the only possible solution for maintaining an equilibrium between the conflicting pressures for unity and diversity. These pressures have been the product of certain factors: geographical, cultural and linguistic, historical, religious and military. In other words it may be said that the choice and the workings of federalism in Pakistan was influenced by these factors which are discussed below.

1. No form of government other than federalism seemed practicable in view of the geographical separation of East and West Pakistan by a distance of 1,100 miles. In between lies India with whom Pakistan's relations have never been friendly. East Pakistan has an area of 55,126 square miles which is one-seventh of the whole, but it has a majority of the population, or 61,000,000 people (1965 census). West Pakistan has an area of 310,403 square miles but only a population of 51,400,000. Prime Minister Liaquat Ali Khan, moving the "Objectives Resolution"¹³ in 1949, said the "Resolution envisages a fed-

¹²Ibid., p. 18.

¹³In March, 1949, the Constituent Assembly of Pakistan passed a resolution on the 'Aims and Objects of the Constitution,' popularly known as the Objectives Resolution. It was later embodied as the Preamble to the Constitution on 1956.

eral form of government, because such is the dictate of geography. It would be idle to think of a unitary form of government when the two parts of our country are separated by more than a thousand miles."¹⁴ On the basis of this geographical separation, the members from East Bengal in the Constituent Assembly demanded for provincial autonomy.¹⁵

2. Besides the geographical separation there exists ethnic and linguistic differences between the people of the two parts. West Pakistan is a heterogeneous region of different cultural and linguistic groups. These groups, although speaking different languages (Punjabi, Sindhi, Baluchi and Pushtu), regard Urdu as the common language of their region. East Pakistan is culturally and linguistically homogeneous with Bengali as the common language. East Bengal has been greatly influenced by Hindu culture. For example, the famous Bengali poet Rabindranath Tagore is widely read throughout East Pakistan, but not in West Pakistan where Iqbal is regarded as the national poet. There are racial differences, too. The people of West Pakistan are mostly the descendants of the Arabs or Mughals, whereas Bengalis are neither

¹⁴Constituent Assembly of Pakistan Debates, Karachi: Government of Pakistan, 1950, Vol. V, No. 1, March 7, 1949, p. 5, cited hereafter as C.A.P. Debates.

¹⁵Ibid., Vol. XVI, No. 31, September 21, 1954, p. 509; Vol. I, No. 52, January 17, 1956, p. 1853.

Aryans nor Arabs. They differ in physique and dietary habits. West Pakistanis are usually tall or of medium height and fair or wheat-skinned people, while Bengalis are generally short and dark-skinned. East Pakistan is almost entirely a rice-eating area, while the diet of West Pakistan is mostly wheat. The role of the cultural and linguistic diversity in the controversy over the division of powers, and its impact on the working of the federal system, will be examined in subsequent chapters.

3. The choice of federation was also the product of history. During British rule, the Muslims of India had demanded for provincial autonomy, with a view that they would be able to form their own government in those provinces where they constituted a majority.¹⁶ This demand could be contained in a federation. The Government of India Act, 1935, introduced a federal form of government with limited measure of provincial autonomy. The desire for regional autonomy later found expression in the famous Lahore Resolution familiarly known as the Pakistan Resolution. The Resolution stated:

. . . the areas in which the Muslims are numerically in a majority as in the North Western and Eastern Zones of India should be grouped to constitute "Independent

¹⁶Refer to Chapter II.

States" in which the constituent units shall be autonomous and sovereign.¹⁷

The Resolution was later modified in 1946 at the Muslim League Legislator's Convention as to envisage the creation of one single Muslim State comprising the Muslim majority provinces in the North East and North West of India. Nevertheless, the members in the Constituent Assembly, demanding more powers for the provinces, asserted that provincial autonomy was guaranteed by the Lahore Resolution.¹⁸ Criticising the draft of the constitution, Prof. Raj Kumar Chakravarty said that it "flouts the spirit of the Lahore Resolution of the Muslim League . . . which said that the federating units should have autonomy in their own sphere."¹⁹ Mr. Abul Mansoor Ahmad said that the draft had violated the spirit of the Lahore Resolution which visualized autonomous provinces.²⁰ Similar interpretation of the Resolution can be noticed

¹⁷ See Pakistan Resolution of the Lahore Session of the All-India Muslim League, March 22-24, 1940 in G. Allana, Pakistan Movement: Historic Documents, Karachi: Paradise Subscription Agency, 1968, p. 226-228.

¹⁸ See C.A.P. Debates, Vol. XVI, No. 31, Sept. 21, 1954, pp. 552-553; Vol. I, No. 28, Sept. 19, 1955, p. 930; Vol. I, No. 51, Jan. 16, 1956, pp. 1825-1836; No. 53, Jan. 21, 1956, pp. 1892-1893; No. 60, Jan. 31, 1956, pp. 2212-2213.

¹⁹ Ibid., Vol. XVI, No. 31, Sept. 21, 1954, p. 509.

²⁰ Ibid., Vol. I, No. 51, Jan. 16, 1956, p. 1836.

in the 21 points programme of the United Front²¹ which stated that East Bengal would get complete autonomy according to the Lahore Resolution.

The spirit for regional autonomy received further impetus from the statements made by Mohammad Ali Jinnah (popularly called in Pakistan, Quaid-i-Azam, meaning The Great Leader) before partition. Jinnah, in an interview in 1946, clarifying various aspects of Pakistan, said that the federated units of Pakistan would "have all the autonomy that you will find in the constitutions of the United States of America, Canada and Australia. But certain vital powers will remain vested in the Central Government, such as the monetary system, national defence and other federal responsibilities."²²

Thus in the presence of the demand for provincial autonomy which was conceded to a limited extent in the Government of India Act, 1935, and later expressed in the Lahore Resolution, federalism in Pakistan may be considered in

²¹The United Front was a coalition of six parties: Awami League, Krishak-Saramik, Nizam-e-Islam, Youth League, Ganatantri Dal and Communist Party. On the basis of its 21 points manifesto it defeated the Muslim League in the East Bengal provincial elections of 1954. The important objectives of the manifesto were: making Bengali a state language; provincial autonomy for East Bengal; restricting central powers to defence, currency and foreign policy; and location of Naval headquarters in East Pakistan and Army headquarters in West Pakistan.

²²Jamiluddin Ahmad, Speeches and Writings of Mr. Jinnah, Vol. II, Lahore: Sh. Mohammad Ashraf, 1964, p. 232-33.

Dicey's language as a "political contrivance to reconcile national unity with the maintenance of states' rights".²³

4. A common religion has produced a desire among Muslims of Pakistan to be united under one general government to order their lives in accordance with the principles of Islam. Prime Minister Liaquat Ali Khan, moving the Objective Resolution in the Constituent Assembly, said that "Pakistan was founded because the Muslims of this sub-continent wanted to build up their lives in accordance with the teachings and traditions of Islam . . ."²⁴ The Islamic fervour and zeal is largely responsible for the realization of Pakistan. The demand for a separate homeland for Muslims was based on the Muslims' contention that they formed a separate nation. Elaborating his views on the separate nationhood of Muslims, Quaid-i-Azam Mohammad Ali Jinnah, in his presidential address at Lahore on March 23, 1940, said, "The Hindus and Muslims belong to two different religious philosophies, social customs, literatures. . . they belong to two different civilizations which are based mainly on conflicting ideas and conceptions."²⁵ Despite the cultural and linguistic differences, the common religion continued to be a unifying force between the peoples of the two halves. Mir

²³Dicey, op. cit., p. 143.

²⁴C.A.P. Debates, Vol. V, No. 1, March 7, 1949, p. 2.

²⁵Jamiluddin Ahmad, Speeches and Writings of Mr. Jinnah, Vol. I, 6th ed., Lahore: Sheikh Mohammad Ashraf, 1960, p. 160.

Ghulam Qadir Khan, pleading for mutual understanding between the people of the two wings, said that "the ties of religion have kept the people of both the wings together. In the absence of this bond we should not have been so near to each other."²⁶ Mr. Farid Ahmad, emphasizing this bond, said that "if the people of (sic) East wing have got anything in common with their brethren in the West wing, . . . it is the religious bond . . ."²⁷ Mr. Suhrawardy, rejecting the idea of 'secession,' conceded that besides military and economic interdependence Islam is one of the bonds of unity between the people of the two wings.²⁸ A survey²⁹ of Pakistan University students undertaken by K. B. Sayeed in this respect indicates that 87 per cent of the people in West Pakistan and 66.7 per cent in East Pakistan regarded Islam as an effective bond of unity between East and West Pakistan.

5. A federal solution seemed appropriate in the presence of a sense of military insecurity from India, which is one of the two necessary conditions as suggested by Riker, for striking a federal bargain.³⁰ Two factors

²⁶C.A.P. Debates, Vol. XV, No. 25, Nov. 7, 1953, p. 712.

²⁷Ibid., Vol. I, No. 53, Jan. 21, 1956, p. 1896.

²⁸Ibid., Vol. I, No. 60, Jan. 31, 1956, pp. 2230-31.

²⁹See K. B. Sayeed, The Political System of Pakistan, Boston: Houghton Mifflin Company, 1967, pp. 182-184.

³⁰For a full exposition of the hypothesis see W. H. Riker, Federalism: Origin, Operation and Significance, Boston: Little Brown, 1964, pp. 73-133.

the same time, the same thing is true of the other side of the coin.

It is not only the same thing, but it is also the same thing in the same way.

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give rise to the sense of insecurity. The first major cause of concern in Pakistan is the attitude of the Indian extremists who have not yet reconciled themselves to the idea of partition. The Jan Sangh party in India still dreams of "Akhand Bharat", or "United India". The Jan Sangh noting with regret "the existence of Pakistan on Indian territory" observed that "this situation has given rise to a number of problems. Bharatiya Jan Sangh will aim at bringing India and Pakistan together by ending their separation."³¹ The second factor is the Indian numerical strength, size and military superiority which compel the culturally diverse elements in Pakistan to unite and work together against a common foe. Such fears were expressed by the members in the Constituent Assembly on various occasions. Mr. Hamidul Huq Choudhary, pointing out the danger, said that "there are enemies who want us to cease to exist," and a party in West Bengal was working "to absorb East Pakistan in to India".³² The presence of Indian threat is further evident from the defence expenditures. More than 60 per cent of the budget expenses from 1948 to 1958³³ were made on defence of the country. Khawaja Nazimuddin, supporting

³¹Quoted in Selig Harrison, "Troubled India and Her Neighbours", Foreign Affairs, Vol. 43, No. 2 (1965), p. 319.

³²National Assembly of Pakistan Debates, Vol. I, No. 3, Feb. 12, 1957, p. 149, cited hereafter as N. A. P. Debates.

³³See Tables 1 and 4.

the defence expenditures, said that "we must be fully prepared to meet any aggression . . . I feel that if necessary a bigger amount should be provided as far as possible to make it absolutely sure that if, God forbid, we have to face an attack we are in a position to meet it adequately."³⁴

Mian Abdul Bari emphasized that in view of the Indian hostility country's defence should be strengthened to preserve the integrity of Pakistan.³⁵ Mr. Daultana, expressing concern over the increasing military strength of India, said that "You must not decrease your expenditure on Defence, . . . because you are a threatened people . . . there are people living around you who do not wish Pakistan to exist . . ."³⁶

In the light of the preceding discussion, it may be argued that federalism in Pakistan was a product of the conflicting pressures of unity and diversity. Under the circumstances existing in Pakistan, federation could be considered as the only possible compromise between the forces of integration and separation.

³⁴C. A. (Legislature) of Pakistan Debates, Vol. I, No. 5, March 2, 1948, p. 125.

³⁵Ibid., Vol. I, No. 5, March 20, 1956, pp. 268-269.

³⁶N. A. P. Debates, Vol. II, No. 9, March 3, 1958, pp. 655-56.

From this general discussion the question arises "What kind of federal system evolved in Pakistan given these factors?" The purpose of the thesis is to answer this question. An attempt is made to answer the following questions.

Why and how did the concept of provincial autonomy develop in the sub-continent? To what extent did the provinces enjoy autonomy? What were the circumstances leading to the partition of the sub-continent?

What was the nature of the federal structure and the interim constitution? How did it operate?

What were the controversial issues and matters of dispute between the leaders of the two wings which delayed constitution-making for nine years? What were the factors responsible for this controversy? How were the issues settled?

What was the basis of the division of powers in the constitution of 1956? How far were federal features followed?

To what extent were the governments under the interim constitution and the constitution of 1956 federal in theory and practice?

I. The Federal Concept and the Division of Powers

A preliminary discussion of the concept of federalism seems necessary before proceeding to the study of the operation of federal government in Pakistan. Federalism is not easy to define; it has meant different things to different people. A. H. Birch has rightly remarked that "Federalism . . . is a concept which has no fixed meaning; its meaning in any particular study is defined by the student in a manner which is determined by the approach which he wishes to make to his material."³⁷

One of the leading authorities on federalism, K. C. Wheare, lays considerable emphasis on the legal and institutional aspects of federalism.³⁸ He defines the federal principle as the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.³⁹ Livingston defines federalism in sociological terms. Pointing out the limitations of a formal legal definition of federalism, he contends that "the essence of federalism lies not in the constitutional or institutional structure but

³⁷A. M. Birch, "Approaches to the Study of Federalism," Political Studies, Vol. XIV, No. I, (1966), p. 15.

³⁸K. C. Wheare, op. cit., Ch. I.

³⁹Ibid., p. 33.

in the society itself."⁴⁰ He further asserts that ". . . federal governments and federal constitutions arise in response to certain stimuli; a federal system is consciously adopted as a means of solving the problems represented by these stimuli."⁴¹ By stimuli, he means the economic, social, political and cultural forces existing in society 'that have made the outward forms of federalism necessary'. He offers a "spectrum", rather than a "model of federalism".⁴² C. J. Friedrich argues that federalism is a process of federalizing, that is, the process of achieving a union of groups which retain their identity.⁴³ Focussing on the political aspects, Riker treats the formation of a federation as essentially a bargain between prospective national leaders and officials of constituent governments reached for the purpose of territorial expansion or military or diplomatic aggression.⁴⁴ R. L. Watts, who was the first one to use

⁴⁰W. S. Livingston, Federalism and Constitutional Change, Oxford: Clarendon Press, 1956, p. 2.

⁴¹Ibid., p. 1.

⁴²For some criticism of Livingston's "spectrum-model", see R. L. Watts, New Federations: Experiments in the Commonwealth, Oxford: Oxford University Press, 1966, pp. 93-95.

⁴³C. J. Friedrich in Birch, "Approaches to the Study of Federalism", Political Studies, Vol. XIV, No. 1, (1966), p. 15.

⁴⁴W. H. Riker, op. cit., pp. 11-13.

the concept of federal political system, defines the federal concept as that principle according to which:

a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which general and regional governments are assigned co-ordinate authority such that neither level of government is legally or politically subordinate to the other.⁴⁵

Although the federal concept has been defined by different writers in different ways, there has been a general concensus among all that the distribution of powers is the principal structural feature of federalism. Livingston asserts that however one defines "federalism", its central element is the division of powers and functions between different levels of political authority.⁴⁶

While the writers on federalism agree that the division of powers is the fundamental component of federalism, they disagree on the nature of the relationship between the central and regional governments. The concepts of "dual federalism" and "cooperative federalism" reflect their contrasting views. K. C. Wheare, emphasizing the co-equal status of both levels of government, argues that the essence of federalism lies in the co-ordinate status of both general and regional governments and

⁴⁵R. L. Watts, op. cit., p. 13.

⁴⁶W. S. Livingston, Federalism in the Commonwealth, London: Published for the Hansard Society by Cassell, 1963, p. XVI.

independence of both in their own spheres. The notion of dual federalism has been developed from Wheare's principle of co-equal jural status and independent existence of both levels of government.⁴⁷ Wheare lays down three conditions for the maintenance of the co-ordinate and independent status of the two levels of government. One is that each government must possess an independent control of financial resources adequate for its exclusive functions. Another is that functions must be distributed in such a way that neither the central nor the unit government, if it chooses to exercise its powers to the full, nullify the activity of the other. Above all, he suggests that no level of government should be conceded the unilateral right to change the constitutional division of power.

Wheare's criteria of co-equal status and independent existence of both levels of government has been criticized by the advocates of "cooperative federalism". Rejecting the principle of dual federalism, Vile argues that ". . . the essence of federalism is that neither level of government shall be wholly dependent on the other but that this spirit is not incompatible with the development of a high degree of mutual interdependence."⁴⁸ He defines federalism as

⁴⁷Wheare, op. cit., Ch. 1.

⁴⁸J. C. Vile, The Structure of American Federalism, Oxford: Oxford University Press, 1961, p. 197.

a system of government in which central and regional authorities are united in a mutually interdependent political relationship. According to him, a balance is maintained, such that neither level of government becomes dominant to the extent that it can dictate the decisions of the other, but each can influence, bargain with, and persuade the other.⁴⁹

D. J. Elazer also criticises the traditional concept of dual federalism as being unacceptable (in the United States) when applied to concrete governmental problems. He argues that federalism in the United States, as practiced, has traditionally been co-operative, that dual federalism as a demarcation of responsibilities has never worked in practice.⁵⁰ He defines federalism as

. . . the mode of political organization that unites smaller politics within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both national and sub-national political systems, enabling all to share in the overall system's decision-making and execution processes.⁵¹

⁴⁹Ibid., p. 199.

⁵⁰D. J. Elazer, The American Partnership, Chicago: The University of Chicago Press, 1962, p. 24.

⁵¹D. J. Elazer, American Federalism: A View from the States, New York: Thomas Y. Crowell Company, 1966, p. 2.

A. H. Birch, rejecting Wheare's notion of independent existence of general and regional governments, defines a federal system "as one in which there is a division of powers between one general and several regional authorities, each of which in its own sphere is co-ordinate with the others, and each of which acts directly on the people through its own administrative agencies."⁵² Livingston asserts that "the key to the nature of federation is in the division of power . . . federation implies the existence of two co-ordinate sets of government, operating at two different levels in two different spheres . . . the line between the two spheres is drawn by the constitution."⁵³ Emphasizing the distribution of powers as the distinguishing feature of federalism, Dicey, the English constitutional lawyer, contended that the object for which a federal state is formed involved a division of authority between the national government and the separate states.⁵⁴ By federalism, he meant the distribution of the force of the state among a number of co-ordinate bodies each originating in and controlled by the constitution.⁵⁵

⁵²A. H. Birch, Federalism, Finance and Social Legislation in Canada, Australia and the United States, Oxford: Clarendon Press, 1955, p. 306.

⁵³Livingston, op. cit., p. 10.

⁵⁴Dicey, op. cit., p. 151.

⁵⁵Ibid., p. 157.

Thus, all definitions discussed in this context, though suggesting different approaches by the individuals mentioned, reveal a general consensus among the authors on the essential features of federalism. The division of powers is not only a defining characteristic but a distinguishing feature of federalism from which all other characteristics of federation evolve.

Federalism also necessitates a written constitution to demarcate the sphere of action of the general and regional governments. The provisions of the constitution are binding on both governments. Neither is allowed to override the terms of the constitution. Emphasizing the written and supreme character of the constitution, Wheare contends that the supreme constitution is essential if the government is to be federal. The written constitution is necessary if the federal government is to work well.⁵⁶ Thus, the supreme and written constitution is the logical outcome of the distribution of powers. Another feature of federalism is the existence of a supreme agency to interpret the terms of the constitution and settle disputes arising between the general and regional governments concerning the exercise of powers.

The sphere of action of both regional and gener-

⁵⁶Wheare, op. cit., pp. 53-55.

al governments is specified in the written constitution. The object of stating the powers is to limit the sphere of action of the government whose powers are defined. Therefore, where the federal constitution defines the powers of the federating units, as was in the case of Canada, the aim was to strengthen the federal authority at the expense of the separate members of the federation. On the other hand, where the constitution lays down the powers of the federal authority and leaves the residuary to the states, as in the case of the United States and the Commonwealth of Australia; the object is to check the powers of the federal authority.

Wheare has suggested two methods of drawing the line of demarcation: one is to define the powers of the general government and leave the residuary powers to the exercise of regional governments; and the other is to mark off the powers of both federal and regional government.⁵⁷ He asserts that the object of the division is to demarcate the sphere within which each government should be independent of the other. Dicey seemed to favour the method of defining the powers of the central government to prevent it from encroaching upon the rights of the states.⁵⁸

⁵⁷Ibid., p. 10.

⁵⁸Dicey, op. cit., p. 151.

To determine whether a country has a federal form it is not sufficient to look at the constitution. One must examine the practice of the government, which may be more important than the law of the constitution. Wheare, emphasizing the working of the system, remarked, "A country may not have a federal constitution; but in practice it may work it in such a way that it provides an example of federal government."⁵⁹ Federalism in action is different from federalism in theory. The Canadian government is federal in practice despite the unitary features of its constitution. Therefore, the nature of federalism in Pakistan will be examined in the light of the theory and practice of the government.

⁵⁹Wheare, op. cit., p. 20.

CHAPTER II

FEDERALISM: ITS TRANSITORY STAGE IN THE SUB-CONTINENT

I. The Emergence of Federalism Under the Government of India Act, 1919 and 1935

The outbreak of the First World War was the beginning of an era of constitutional change in India. The response of Indians to the British war effort was immediate and generous. Indians contributed in manpower and wealth expecting that their loyalty and services would be rewarded with the grant of self-government by the British. The claim of the allied powers that the war had been waged for making the world "safe for democracy" created new hopes in India. The growing demand of Indians for a share in the administration of their country coupled with general unrest and internal disorder throughout India compelled the British to devise some means for the heterogeneous population to participate in the governing of their own country. Consequently, in 1917, Montague, the Secretary of State for India, announced that the policy of the British Government was to "provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India

as an integral part of the Empire."¹

Soon after the proclamation, Mr. Montague came to India with the object of determining the steps to be taken to introduce responsible government. The deliberations of Mr. Montague and Lord Chelmsford (Viceroy of India) resulted in a joint report known as the Montague-Chelmsford Report. The report suggested that responsible government should be gradually introduced in India by four ways: (a) by making local bodies independent of outside control; (b) by giving the provinces the largest measure of independence in legislative, administrative and financial fields; (c) by enlarging the Indian Legislative Council to make it more representative of Indians; and (d) by relaxing the control of the British Parliament and the Secretary of State over the Government of India. A close study of the Montague-Chelmsford report suggests that the creation of some form of a federal union was the ultimate goal of British policy in India. The report said:

Our conception of the eventual future of India is a sisterhood of states, self-governing in all matters of purely local or provincial interests . . . over this congeries of States would preside a central government . . . deal-

¹Quoted in C. H. Phillips, The Evolution of India & Pakistan, 1858 to 1947. Select Documents, London: Oxford University Press, 1962, p. 264.

ing with matters, both internal and external, of common interest to the whole of India; . . .²

Thus a definite policy of decentralization as a first step towards the gradual introduction of self-government was adopted in 1919. The Montague-Chelmsford report regarded the provinces as "the domain in which the earlier steps toward the progressive realization of responsible government should be taken."³ Therefore, it was deemed expedient to give to the "provinces in provincial matters the largest measure of independence of the government of India, which is compatible with the due discharge by the latter of its own responsibilities."⁴ The constitutional reforms of 1919 viewed in this perspective, may be considered an attempt to establish the preliminary stages of federalism by granting some measure of independence to the provinces in provincial matters.

Prior to the Act of 1919, the Government of India had maintained its authority over the provinces in three ways: by the financial system which left the provinces at the mercy of the central government; by the control of legislation; and by interference even in the day-to-day details of administration. Since the

²Eddy and Lawton, India's New Constitution, London: MacMillan, 1935, p. 4.

³Philips, op. cit., p. 267.

⁴Ibid.

main provisions of the Act consisted of the establishment of responsible government in the provinces, the authority of the central government in these three subject matters was limited by the Act itself.

Under the Act, legislative powers were classified as central and provincial. There were forty-seven central subjects and the rest devolved upon the provincial governments. This initial division of powers was based on the principle that matters in regard to which uniformity in legislation was necessary or desirable for the whole of India or for more than one province, should be regarded as central, while others in which only a particular province was interested, should be treated as provincial.

The Act introduced "Dyarchy" in the provinces. Under this system provincial subjects were divided into "Reserved" and "Transferred". There were thirty-six "Reserved" subjects which included such matters as law and order, finance, land revenue, famine and relief. These subjects were to be administered by the provincial governor and his executive council who were to continue to be responsible to the Government of India. The "Transferred" subjects included matters such as education, agriculture, public health, and local self-government, and others, numbered twenty in all. These functions were to be managed by provincial ministers responsible to the provincial legislature. In effect, a three fold division

existed, Central, Reserved and Transferred. It may be argued that for all intents and purposes the "Reserved" subjects were federal in the sense that they were controlled by the provincial governor who was to act as the agent of the central government.

In financial matters, the provincial dependency on the central government was reduced by dividing the revenue resources between the central and provincial governments. One objective of the Act was to make the provinces financially independent of the central government. This policy was in accordance with the recommendation of the Montague-Chelmsford Report which stated that if provincial autonomy was to be meaningful, the provinces must not be dependent on the Indian government for their means of development.⁵

However, looking at the vast powers of the Governor General and the Provincial Governor, it may be said that the autonomy granted to the provinces was severely limited. The Governor-General-in-Council had all-embracing powers to superintend, direct and control the provincial government even in the transferred fields. For the administration of the reserved subjects, the Governor-General-in-Council was responsible to the British authorities in London. Besides the supervisory and con-

⁵ Report on Indian Constitutional Reforms, quoted in Philips, op. cit., p. 596.

trolling authority over the provincial subjects, the Governor-General, under his special powers known as "safeguards" was empowered to interfere in provincial administration. A provincial Governor was appointed by and was responsible to the central government. He was to act under the supervision and control of the Governor-General, and could override the decision of his Executive Council in any matter in which the "safety, tranquility or interests of his province or any party thereof was affected." Under Section 72(E) of the Act, the Governor could secure necessary legislation in spite of opposition from a provincial legislature.

The Act did not introduce responsible government at the centre. The Government of India continued to be "subordinate, unitary government under His Majesty's rule". The Governor-General continued to be responsible to the British Government for the supervision and control of the Government of India.

The working of the reforms in the provinces exhibited the short-comings inherent in the Act. As pointed out in the Minority Report of the Reforms Inquiry Committee 1924, the absence of collective responsibility of the Ministers and the over-riding powers of the Governor hampered the growth of responsible government in the provinces. The Governors preferred to deal with the Ministers individually and not collectively which weakened

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their position.⁶ Moreover, since the Ministers were not drawn from a homogeneous party backed by the majority in the legislature they felt no obligation to act in union. The Committee noted that the over-riding powers granted to the Governor were meant to be used in special circumstances and emergencies, but the Governors exercised them even in normal circumstances.

The Act did not satisfy the aspirations of Indians who were demanding self-government. Growing Hindu-Muslim differences and general political unrest led the British Government in 1927 to appoint a statutory commission known as the "Simon Commission" to enquire into Indian affairs. Section 84(A) of the Government of India Act had provided for the appointment of such a commission. The Commission considered a federal form of government as the only government under which various provinces and states differing widely from each other could be brought together while retaining their internal autonomy.

The recommendations of the Simon Commission and the deliberation of the Round Table Conferences (1930-32) became the basis of the Government of India Act, 1935. In the face of the hard realities of the Indian situation and the Simon Commission's recommendation, the British

⁶See Philips, op. cit., pp. 282-285.

Government considered a federal form of government as the only solution to a number of crucial problems.

Federation was considered a device to bring "the two Indias" together under a common constitution.⁷

The creation of a federation resulted in a new distribution of legislative powers. Under the Act of 1919, there was a two-fold division of powers; central and provincial, and the provincial subjects were again classified into "transferred" and "reserved". The Act of 1935 provided for three lists: a federal list containing fifty-nine subjects, a provincial list of fifty-four subjects, and a concurrent list of thirty-six subjects common to both levels of government. This method of division of powers, as admitted by the Joint Parliamentary Committee in its report, was "without precedent". In the area of concurrent jurisdiction, both were competent to legislate. In the case of a conflict between federal and provincial law, federal law was to prevail and provincial law, to the extent of repugnancy, would be void.

The residual power was not vested in any particular government. The Governor-General, however, acting at his discretion could empower either the federal or a provincial legislature to enact a law with respect

⁷Watts, op. cit., p. 17.

to any matter not enumerated in these lists. Explaining the implications of this device, Sir Samuel Hoare argued during the committee stage on the bill that this method had been adopted in preference to a more logical method owing to the sharp cleavage of opinion between the Congress and the Muslim League. The centralizing philosophy of the Congress was at odds with the Muslims' demand for a weak centre.⁸ The Muslim League wanted to keep the residual powers in the provinces for two reasons. One was that Hindus being in the majority would control the central government. The other was that the Muslims would have a chance of forming their own governments in those provinces in which they constituted a majority. Congress, on the other hand, wanted to add more power to the centre. The device of the three lists was an attempt to compromise between the conflicting interests of the two communities.

A brief analysis of the relation between the central and provincial governments under the Act shows that both governments in the exercise of their powers were limited by various "safeguards" and "special re-

⁸The Nehru Report of 1928 and Jinnah's Fourteen points (which came later in 1929 as a reply to the Nehru Report) reflect the conflicting views of the Congress and the League on the federal structure of India. The Report recommended that the centre should have a unitary basis. Quaid-i-Azam Mohammad Ali Jinnah in his fourteen points, proposed that the future constitution of India should be federal with the residuary powers in the provinces, and provinces should be granted autonomy.

sponsibilities". In the first place, there was a denial of legislative powers to the federal and provincial legislatures in regard to a large number of subjects. According to Section 108 of the Act, the federal and provincial legislatures could not pass any law amending any of the provisions of the Act of 1935, or any rules made by the Governor-General or Governor "in his discretion" or in the exercise of his individual judgment. Secondly, there was a grant of powers to the Governor-General or Governors to override their ministers and legislators in certain circumstances, including the assumption of absolute dictatorial powers in the event of the breakdown of the constitution. A Governor of a province in the exercise of his functions was empowered to take any step under the "special responsibilities" for the prevention of any grave menace to the peace and tranquility of the province, safeguarding legitimate interests of minorities and of the members of the Indian Public Service, and for securing the execution of orders or directions issued to him by the Governor-General "in his discretion". As pointed out by Sir Shafaat Ahmed Khan, "the field of special responsibility permeates the whole administration and it is difficult to suggest any subject, whether in the federal or in the provincial field, in which it may not emerge at any moment."⁹ Thus, the

⁹ Shafaat Ahmed Khan in G. W. Choudhary, Democracy in Pakistan, Dacca: Green Book House, 1963, p. 26.

powers granted to the Governor-General and the Governors, under the "safeguards" and "special responsibilities" greatly minimized the federal features of the Act of 1935. The provisions for "safeguards" and "special responsibilities" showed the reluctance of the British government to relinquish complete control over Indian affairs. Thus, the Imperial Federation introduced by the Act of 1935 can be seen as an attempt to maintain British authority over India.

The federal provisions relating to the central government were never put into force because of two reasons. First, the Indian princes were not willing to accede to the Federation. The second reason was the rejection of the federal provisions by the Congress and the Muslim League due to the extraordinary powers of the Governor-General. However, the League was willing to co-operate with the British Government to enforce the provisions concerning provincial autonomy. In doing so, the League thought that Muslims would have a chance to form their own governments in the Muslim majority provinces. Congress condemned both the federal and provincial parts of the Act. Later, it modified its attitude and expressed its willingness to participate in the government.

Accordingly, the provincial scheme was enforced and elections were held in the provinces in 1937. The

Congress Party, having won a majority, formed governments in eight provinces. Congress rule in the provinces during 1937-1939, added to the Muslims doubts and apprehensions that their cultural, linguistic and religious identity could be preserved under a Hindu government. The Pirpur Report pointed out the alleged injustices and oppressions of the Congress governments.¹⁰ The Governors did not exercise their special powers to protect the rights of minorities. Quaid-i-Azam Mohammad Ali Jinnah, in his Lucknow address, observed that "the Governors and the Governor-General, who had been given the powers and special responsibility to safeguard and protect the minorities under the constitution, . . . have failed to use them . . ."¹¹ When the Congress ministeries resigned in 1939 as a protest against the British Government's decision to bring India in to war (World War II), without consulting the Indians, the Muslims gave a sigh of relief and observed a "day of deliverance".

Federalism is a popular formula for reconciling societal differences, but where communal differences are too sharp and fundamental, it will not work.¹² The com-

¹⁰The Pirpur Report was entitled The Report of the Inquiry Committee Appointed by the Council of the All-India Muslim League to Inquire into Muslim Grievances in Congress Provinces, Delhi: All India Muslim League, 1938.

¹¹Jamiluddin Ahmad, op. cit., p. 29.

¹²Wheare, op. cit., Ch. III.

munal cleavages between Hindus and Muslims proved too fundamental to be contained within an All-India Federation. To quote Jinnah's words "passage of time will not harmonize the differences between the two nations and Indian Federation will be a cockpit of fueds."

The working of the provincial scheme and the policy of the Congress Ministeries during the period 1937-39 made the Muslims realise that their future would not be safe under an All-Indian Federation. The Sind Provincial Muslim League, in a resolution in October 1938, opposing the federal scheme of 1935, rejected the possibility of 'the evolution of a single united India' on account of the " . . . anti-Muslim policy of the majority community, and also on account of the acute differences of religion, language, script, culture, social laws and outlook on life of the two major communities . . ."¹³ The Resolution passed by the All-India Muslim League in March 1939, disapproving the Federal Scheme of 1935, recommended that on account of the failure of the provincial scheme to safeguard the rights of the Muslim minorities in various provinces, the League would explore the possibilities of other alternative schemes to protect the interests of the Muslims.¹⁴ In another Resol-

¹³ See the Resolution of the Sind Provincial Muslim League in G. Allana, op. cit., p. 196.

¹⁴ Ibid., pp. 206-207.

ution adopted in September, 1939, Muslim League, expressing its opposition to any "federal objective" which would necessarily result in a majority community rule, urged the British Government to review the entire problem of India's future constitution in the light of the experience gained by the working of the provincial constitution.¹⁵

Thus from 1938 onwards, there was a marked change in the League's policy. Instead of advocating a weak centre with the vesting of residual powers in the provinces, the League's motto was now the creation of an independent state for Muslims.¹⁶ The demand for a separate homeland for Muslims was officially adopted in the famous Lahore Resolution passed in 1940 by the All-India Muslim League. The League's reaction, in later years, to the British proposals to solve Indian constitutional problems, reflects the change from the demand for provincial autonomy to complete independence. Rejecting the concept of a united India, Quaid-i-Azam Mohamad Ali Jinnah in 1946, said that "we are opposed to a united India constitution with Central Government, Feder-

¹⁵Ibid., pp. 217-18.

¹⁶The idea of the creation of a Muslim state at least in the North West of India was suggested by Iqbal in 1930 at the All-India Muslim League meeting at Allahabad. However, the idea became a definite goal of the Muslim League after 1940.

al or otherwise, . . . because it will mean our transfer from the British Raj (rule) to the Hindu raj. A united India means a Hindu racial and cultural majority dominating over Muslims whose civilization, culture and social structure of life is totally different."¹⁷

The British Government made various efforts to seek an agreement between the Congress and the Muslim League. In 1942, Sir Stafford Cripps visited India and submitted his proposals to the British Government. The Cripps proposal recommended the creation of an Indian Union consisting of the provinces and Indian states. The constitution of the Union was to be framed by the Constituent Assembly composed of the members elected by the provincial legislatures and the representatives appointed by the Indian states. The provinces were given the right to remain out of the Indian Union in case of their disapproval of the constitution framed by the Constituent Assembly. The proposals were rejected by both the Congress and the League on different grounds. Congress rejected it because it considered the right of the provinces to stay out of the Union as "a severe blow to the conception of Indian unity". Whereas the proposals were unacceptable to the Muslim League because it con-

¹⁷Jamiluddin Ahmad, op. cit., Vol. II, p. 279.

sidered that in view of the failure of the efforts of Hindu-Muslims reconciliation, it was not possible 'to compel them (Hindus and Muslims) to constitute one Indian Union composed of the two principal nations - Hindus and Muslims.' The only possible solution which seemed practicable to the League was the partition of India into two independent zones.¹⁸

After the failure of the Cripps Mission, British Government made another attempt to reconcile the conflicting demands of the Congress and the Muslim League. After long negotiations with the Congress and the League in 1946, the Cabinet Mission, headed by the Secretary of State for India, Sir Pathic Lawrence, submitted its own proposals. The plan recommended to create an All-Indian Union consisting of the British India provinces and the Indian states, having power over Foreign Affairs, Defence and Communications. All subjects other than the Union Subjects, and residuary powers were to be vested in the provinces. According to the scheme, a Constituent Assembly was to be set up consisting of the members elected by the provincial legislatures and the representatives appointed by the Indian States. The provinces were to be grouped into three categories: A group consisting of the Hindu majority provinces, B

¹⁸Allana, op. cit., pp. 404-408.

group of Muslim majority provinces in the North West and C group of the Muslim majority provinces in the North East. The provinces were given the right to opt out of the group but only after the first general election held under the new constitution. The Mission also provided for an Interim Government representing the major political parties of India, to carry on the administration of the country until a new constitution would be framed by the Constituent Assembly.

In the light of the proposals, the Cabinet Mission Plan may be considered a device to compromise between the conflicting demands of the Congress for a united India and the League's demand for partition. By providing for the groupings the plan sought to maintain the unity of India, meeting, at the same time, to some extent, the Muslims demands for self-rule in those areas where they constituted a majority. Muslim League accepted the plan because of two considerations. The first was that the League's demand for a weak centre was met by the limited powers granted to the centre. The second consideration was that the grouping scheme 'would ultimately result in the establishment of complete sovereign Pakistan.' Therefore, the League regarded the grouping provision as an essential part of the whole scheme, while the Congress was opposed to the compulsory grouping of the provinces. The Congress contended that

the provinces could join or stay out of the group. The Mission, on account of the Congress interpretation of the scheme, had to clarify that "the reasons for the grouping of the Provinces are well known and this is an essential feature of the scheme and can only be modified by agreement between the parties."

Despite this clarification, Congress insisted on its own interpretation of the scheme. As a result, Muslim League, which had ultimately joined the interim government, refused to participate in the Constituent Assembly. The League's absence from the Constituent Assembly made the British Government and the Congress realize that a constitution framed by the Constituent Assembly without League participation, could not be imposed on the unwilling Muslim majority provinces. In view of the Congress-League cleavages, partition seemed to be the only solution of the communal problem in India. As such, the British Government decided to divide the sub-continent into two parts, and the Indian Independence Act, providing for this division, was passed in 1947 by the British Parliament.

The Indian Independence Act created the Independent Dominions of India and Pakistan. The British control over India and the British suzerainty over the princely states came to an end. The Act took away all extensive powers of the Governor-General and Governors granted by

the Act of 1935. Neither the Governor-General nor a Governor could act "in his discretion" or exercise his "individual judgment". The Act provided that the Governor-General would no longer be the representative of His Majesty, but would henceforth be appointed on the advice of the Dominion Government. The Constituent Assembly of each Dominion, the establishment of which was provided for in the Act, would be the supreme constitution-making and law-making body of each Dominion. The Acts of the British Parliament were no longer applicable to each country unless extended by them. The Act further provided that the Government of India Act, 1935, would be the provisional constitution of each Dominion. Under Section 9, the Governor-General was empowered to make necessary provisions for adaptations and modifications of the Government of India Act, 1935, which could be repealed and amended by the legislature of each Dominion.

Thus, from the legal point of view, the State of Pakistan was the outcome of the Indian Independence Act. But viewed in historical perspective, it was the product of a long and continuous process of Muslim struggle for freedom from British rule and Hindu domination. The Government of India Act, 1935, which became the provisional constitution of Pakistan, had provided for a federal form of government, but Pakistan retained the federal form because of prevalence of the factors discussed in the first chapter.

CHAPTER III

FEDERATION UNDER THE INTERIM CONSTITUTION

Under Section 8 of the Indian Independence Act, 1947, the Government of India Act, 1935, became with certain modifications, the provisional or interim constitution of Pakistan. The country was governed under the provisions of the interim constitution until 1956 when the second Constituent Assembly of Pakistan ultimately succeeded in framing the Constitution.

The Pakistan (Provisional Constitution) Order 1947, established the "Federation of Pakistan" which included: (1) The four provinces of East Bengal, West Punjab, Sind and North West Frontier Provinces; (2) Baluchistan; (3) Any other areas that might with the consent of the Federation be included therein; (4) The Capital of the Federation, Karachi; and (5) Such Indian states as might accede to the Federation.

Under the Interim Constitution, a highly centralized federal system was established in Pakistan. The Government of India Act, 1935, passed with colonial objectives in mind, provided for a strong central government. The central government's hold on the legislative, financial, administrative and political spheres was

so great that for practical purposes, the country's governmental structure could hardly be described as truly federal.¹

I. Central Dominance in the Legislative Field

The legislative powers of the Federal and Provincial Assemblies were specified in lists I and II respectively of the Government of India Act, 1935, with each Legislature having exclusive law-making authority over subjects included in its list. In so far as the concurrent list was concerned, supremacy had been granted to the Federal Government according to Section 107, subsections 1, 2 and 3 of the Act.

Moreover, Provincial Legislatures did not enjoy exclusive power over all provincial subjects. There were functions such as: Development of Industries; Regulations of Mines and Oilfields and Mineral development, which, though placed under the Provincial domain, were still subject to Federal control.² The centre could declare by law that its own control over these subjects was 'expedient in the public interest'.³ Accordingly, Federal control over 27 industries including jute and cotton,

¹Choudhary, op. cit., p. 224.

²Government of India Act, 1935 (as modified up to 3rd August, 1955), Karachi: Government of Pakistan Press, 1955, List II, Items 23 and 29.

³Ibid., List I, Items 34 and 36.

was established by the Development of Industries (Federal Control) Act, XIII, 1949, with the objective of developing industries in the shortest possible time. The debate on this Bill in the Assembly demonstrated the willingness of the provinces to let the centre take over the control and planning of industrial development. Mr. Dutta was "happy to see that Centre has also taken the responsibility to improve even small and medium industries." Similarly, Mr. Nur Ahmad and Abul Kasim from East Bengal, conceded that the Centre was in a very advantageous position in the matter of expert technical knowledge and financial resources.⁴

The centralizing tendency appears from the amendments of the Government of India Act, 1935. The Centre had full power to alter the interim constitution. According to Section 9 (1) of the Indian Independence Act, 1947, the constitution could be amended by an order of the Governor-General until 1949, and subsequently by an Act of the Constituent Assembly. Modifications made to the Act, after independence, further enlarged the powers of the central government. The emergency powers of the central government were extended by the amendment of Section 102 of the Government of India Act, 1935. The section had provided for a declaration of emergency

⁴C. A. (Legislature) Pakistan Debates, Vol. I, No. 16, March 10, 1949, pp. 629-633.

by the Governor-General, in case of any threat to the security of the country. By the amendment of Section 102, the Governor-General was empowered to declare a state of emergency "if the economic life of Pakistan" was in danger. The amendment was deemed essential in view of the mass migration of over 6 million people into Pakistan. Despite the fact that the Bill was to enlarge the central power, it was supported by the members who were conscious of the gravity of the situation.⁵ Khawaja Nazimuddin, from East Bengal, supporting the Bill, said that "the refugee problem in Punjab is of such a large magnitude and on such large scale that no Provincial Government can cope with it and it is essential that Centre should intervene and in co-operation with the Province, try and tackle this problem."⁶ By another amendment, the Government of India Act (Amendment) Order, 1948, a central police force was established to deal with "certain offences committed in connection with matters concerning the Central and Provincial Governments."⁷ Similarly, in 1952, preventive detention was transferred from the provincial to the con-

⁵C. A. P. Debates, Vol. III, No. 3, 22nd May, 1948, pp. 46-49.

⁶Ibid., p. 57.

⁷Government of India Act, 1935, op. cit., List III, New Section I (b).

current list⁸ with the object of enabling the central government to legislate for the maintenance of public order and essential supplies in the country. Moving the amendment bill Pirzada Abdus Sattar said that " . . . smuggling and black-marketing have been on the increase and have created . . . shortage of essential supplies, therefore, it has been thought necessary in consultation with Provincial Governments, to take the power of legislation with regard to preventive detention"⁹ By another amendment in 1953, Federal Legislature assumed exclusive control over Labour exchanges and training establishments.¹⁰

The Federal Legislature was empowered to legislate for the provinces on provincial subjects in two instances: (1) on the request of two or more provinces,¹¹ and (2) on the proclamation of emergency by the Governor-General under Section 102 which read as follows:

The Federal Legislature shall, if the Governor-General has declared by proclamation that a grave emergency exists whereby the security or economic life of Pakistan or any part thereof is threatened by war or internal disturbances or circumstances arising out of any mass movement of population from or into Pakistan, have power to make laws for a province or any part

⁸ Ibid., List III, IA, inserted by the Government of India (Second Amendment) Act, 1952.

⁹ C. A. P. Debates, Vol. XI, No. 4, 15th April, 1952, p. 53.

¹⁰ Government of India Act, 1935, op. cit., List I, 12A, inserted by the Constitution (Amendment) Act, 1953.

¹¹ Ibid., Section 103.

thereof, with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act or to make laws, notwithstanding anything in any other provision of this Act, relating to the custody arrangement and disposal of the property of any person concerned in any mass movement as aforesaid.¹²

Laws enacted by the Federal Legislature under this section would cease to operate six months after the expiration of the proclamation. This clause severely limited provincial autonomy. Although the residual powers of legislation were vested neither in the federal legislature nor in the provincial assemblies, under Section 104, the Governor-General could empower either of them to enact a law with respect to any matter not enumerated in the Seventh Schedule of the 1935, Act.

In August 1948, Quaid-i-Azam Mohammad Ali Jinnah declared a state of emergency under Section 102 to meet the situation created by the heavy influx of refugees. The Proclamation stated that "Whereas the economic life of Pakistan is threatened by circumstances arising out of the mass movement of population from and into Pakistan, a State of Emergency is hereby declared."¹³ This step was taken because the central government failed to persuade the provinces, especially Sind and N. W. F. P. to

¹²Ibid., Section 102.

¹³Dawn, (Karachi), August 27, 1948, p. I.

absorb a surplus of 500,000 refugees to relieve West Punjab of its burden. To cope with the situation, Quaid-i-Azam Mohammad Ali Jinnah had to resort to his emergency powers. Under the proclamation, the centre directed the provinces and states to take up the following number of refugees.¹⁴

Sind	200,000
N. W. F. P.	100,000
Bhawalpur & Khairpur states and Baluchistan	100,000
West Punjab	100,000

The newspaper, Dawn, justifying the action, asserted that "Pakistan is passing through a period during which the security of the State and the largest good of the largest number should be the sole aim of those whom the nation has placed at the helm of its affairs."¹⁵

Besides Section 102, another instrument of central control was section 92A under which central rule could be imposed in the provinces. The section laid down:

If, at any time, the Governor-General is satisfied that a grave emergency exists whereby the peace or security of Pakistan or any part thereof is threatened or that a situation has arisen in which the government of a province cannot be carried on in accordance with the provisions of this Act, he may, by proclamation, direct the Governor of a province to assume, on behalf of the Governor-General, all or any of the powers vested in or exercisable by any provincial body or authority.

¹⁴DAWN, (Karachi), August 29, 1949, p. I.

¹⁵Ibid., p. 5.

Any such proclamation may contain such identical and consequential provisions as may appear to the Governor-General to be necessary or desirable to giving effect to the objects of the proclamation including provisions for suspending, in whole or in part, the operation of any provisions of this Act relating to any provincial body or authority.

The power granted to the Governor-General under this section was exercised on many occasions. The constitutional machinery was suspended and central authority was imposed in the Punjab (1949), Sind (1951) and East Bengal (1954). In some cases, as in Punjab (1953) or as in East Bengal (1954) the centre had justifiable grounds to impose central rule in the provinces. Anti-Ahmadi movement in Punjab in 1953 had led to the complete breakdown of law and order and the provincial cabinet of Mr. Daultana failed to control the situation. Similarly, the action in Bengal is defensible on the grounds of law and order. A state of lawlessness existed in which as many as 400 people were killed in a single day in May, 1954.¹⁶ However, there were instances in which the power was abused and intervention was motivated by political factor, as was the case in Sind, Punjab and N. W. F. P. in 1954-55.

II. Central Dominance in the Financial Sphere

To ensure states' independence in financial field, Wheare suggests that "grants, if they are to rank

¹⁶Dawn, (Karachi), May 22, 1954, p. 1.

as independent sources of revenue, must not depend, of course, upon the good will of the contributing government. They must be obligatory contributions about which the contributing government has no discretion."¹⁷

The Government of India Act, 1935, defined the taxing jurisdiction of the central and provincial legislatures. The major sources of revenue were given to the centre while the provinces were to retain the proceeds of all taxes levied by them. In addition, the proceeds of certain taxes were to be shared between the centre and the provinces. After independence, the abnormal conditions created by the mass migration and additional defence expenditures made it necessary to review pre-independence fiscal arrangements. In November, 1947, it was decided, in a conference consisting of representatives of the Central and Provincial Governments that the allocations of income tax would no longer be made by the Centre as long as the defence expenditures remained heavy and that the administration of the sales tax should be taken over by the Centre and the proceeds divided between the Centre and the Provinces.¹⁸ Impressed by the grave circumstances and the financial difficulties with which the central government was faced at that time and after, and

¹⁷Wheare, op. cit., p. 101.

¹⁸C. A. (Legislature) Pakistan Debates, Vol. I, No. 4, 24th March, 1951, pp. 271-272.

by a special appeal by Jinnah, the provincial representatives agreed to waive their right to their respective income tax allocations. Accordingly, the policy of sharing income tax revenues with the provinces was abandoned. Revenues from the sales tax in the provincial list were taken over by the central government on a temporary basis. The Government of India (Amendment) Act, 1948, provided that until March, 1950, the Central Government would levy and collect the sales tax and that certain prescribed portions of the net proceeds of this tax would be assigned to the Provinces. After obtaining the consent of the Provincial Governments,¹⁹ the period was further extended to March, 1952, by the Government of India (Fourth Amendment) Act, 1950. Similarly, the Government of India Act, 1935, provided that at least 50 per cent of the jute export duty was to be returned to the jute growing provinces. This provision was changed and by an order of the Governor-General, 62½ per cent was fixed as the central share of jute export duty.

In the beginning, faced with the tremendous problems of state maintenance and nation building, the central government had to withhold grants which were due to the provinces and to transfer provincial sources of revenue like receipts from the sales tax and succession duties to the central government. This temporary

¹⁹C. A. P. Debates, Vol. VII, No. 1, 27th March, 1950, p. 2.

transfer of sales tax was later made permanent by the Government of India (Amendment) Act, 1952. In 1951-52, the Federal Government had a surplus of 290 million rupees which prompted Nurul Amin, the Chief Minister of East Bengal to protest against the central government's continued encroachment on provincial sources of revenue. He said that the deficits in the provinces "is due to the fact that on the one hand, provinces are deprived of their sources of income and on the other hand, they are not receiving the proper attention from the centre."²⁰

The improved financial situation of the central government and the provincial demand for more allocation of revenues resulted in a reexamination of the position in 1951. Sir Jeremy Raisman was appointed to enquire into the financial position of the provinces and to make recommendations regarding allocation of revenues between the central and provincial governments. On the basis of his recommendations, 50 per cent of the net proceeds of income tax were distributed amongst the provinces and the states; the provinces were allowed to retain 50 per cent of the net collection of sales tax in their areas and East Bengal was allocated 62½ per cent of the basic jute duty.

²⁰ C. A. (Legislature) of Pakistan Debates, Vol. I, No. 2, 21st March, 1951, p. 54.

TABLE I
BUDGETARY POSITION OF THE CENTRAL GOVERNMENT¹
1947 - 1955

REVENUE		(Rupees in millions)									
Principal Heads of Revenue	1947-48*	1948-49	1949-50	1950-51	1951-52	1952-53	1953-54	1954-55			
Customs	113.7	329.2	422.5	776.2	821.5	658.9	361.0	416.0			
Central Excise Duties	13.8	53.4	51.5	67.2	70.9	69.9	131.6	115.4			
Income Tax & Corporation Tax	27.0	65.9	115.5	132.4	172.3	175.9	180.7	193.5			
Sales Tax	-	41.7	89.4	71.1	145.1	130.1	86.5	105.9			
Salt	4.0	37.6	24.4	22.2	25.0	23.4	24.4	22.0			
Other Heads	2.7	11.1	15.1	23.7	34.0	39.7	42.0	44.1			
Total - Principal Heads	161.2	538.9	718.4	1,092.8	1,268.8	1,097.9	826.2	896.9			
Railways (net)	6.7	33.4	19.7	17.1	15.2	49.5	61.6	61.8			
Posts & Telegraphs (net)	1.7	2.5	-	6.2	9.4	16.0	14.2	5.4			
Debt Services	26.8	49.4	61.5	60.1	67.7	64.8	75.3	80.4			
Civil Administration	2.2	7.1	7.8	12.4	13.8	18.5	25.6	17.4			
Currency & Mint	-	-	10.8	9.5	6.6	8.0	19.3	20.9			
Miscellaneous	3.8	7.5	6.6	9.3	12.5	16.1	25.8	13.4			
Defence Services	11.7	21.6	54.7	48.4	48.4	48.5	53.3	39.9			
Extraordinary Items	.6	5.2	2.9	14.5	2.7	11.9	2.2	14.2			
Other Heads	1.0	2.0	3.0	2.9	3.3	3.1	7.0	6.7			
Total Revenue Receipts	198.9	667.6	885.4	1,273.2	1,448.4	1,334.3	1,110.5	1,157.0			

* - For the period 14th August, 1947, to 31st March, 1948.
1. Pakistan 1957-58, Karachi: Pakistan Publications, 1958, p. 33.

TABLE I - continued

(Rupees in millions)

Expenditure met from Revenue	1947-48	1948-49	1949-50	1950-51	1951-52	1952-53	1953-54	1954-55
Direct Demand on Revenue	6.9	15.5	19.8	22.1	25.0	27.4	25.1	27.0
Debt Services	9.0	21.0	30.7	69.4	66.3	81.1	77.4	89.1
Civil Administration	49.0	109.0	138.7	169.3	210.2	236.5	227.5	229.4
General Administration	8.2	19.7	22.7	28.8	34.0	41.1	37.3	42.7
Frontier Regions	21.3	42.6	53.9	57.8	67.4	72.4	63.1	68.3
Foreign Affairs	3.7	10.1	13.6	14.5	18.5	20.2	17.8	17.3
Education	.9	2.8	6.1	6.0	10.0	12.3	10.4	19.1
Medical & Public Health	1.1	2.6	3.9	4.6	7.1	8.8	8.9	8.5
Other Beneficent & Social Service								
Departments	5.2	13.8	16.1	24.3	29.2	33.7	40.4	28.2
Other Departments	8.6	17.4	22.4	33.3	44.0	48.0	49.6	45.3
Currency & Mint	1.4	3.6	4.6	4.5	4.6	5.1	3.8	3.3
Civil Works	2.3	6.6	9.5	16.2	16.6	11.3	16.1	26.0
Miscellaneous	8.0	15.1	10.4	297.7	237.9	115.0	80.8	78.0
Pensions, Stationery & Printing	2.6	10.4	4.5	.5	14.0	6.9	8.5	8.3
Contribution to the Special Fund for Rehabilitation	-	-	-	6.2	16.5	18.1	20.4	21.5
Other Miscellaneous Expenditure	5.4	4.7	5.9	292.0	207.4	90.0	51.9	48.2
Defence Services	153.8	461.5	625.4	649.9	779.1	13.65	783.4	639.3
Contributions & Miscellaneous Adjustments between the Central & Provincial Governments	5.0	14.0	16.0	36.0	101.0	19.5	12.5	57.1
Other Heads	.6	.7	.9	1.1	1.6	40.8	12.4	.9
Total - Expenditure met from Revenue	236.0	647.0	856.0	1,266.2	1,442.3	1,320.1	1,108.7	1,150.1
Surplus	-37.1	20.6	29.4	7.0	6.1	14.2	1.8	6.9

TABLE 21

FINANCIAL POSITION OF THE PROVINCIAL GOVERNMENTS
1947 to 1955

(In millions of rupees)										
	Actuals 1947-48	Actuals 1948-49	Actuals 1949-50	Actuals 1950-51	Actuals 1951-52	Actuals 1952-53	Actuals 1953-54	Revised Estimates 1954-55		
East Bengal										
Gross Revenue	97.2*	168.6	144.2	176.0	201.1	196.4	224.2	246.4		
Gross Expenditure	88.4*	160.0	171.0	182.4	222.6	247.2	261.5	284.5		
Deficit (-)										
Surplus (+)	8.8*	8.6	-26.8	-6.4	-21.5	-50.8	-37.3	-38.1		
Punjab										
Gross Revenue	65.7*	172.1	195.0	221.8	259.1	216.0	256.4	276.1		
Gross Expenditure	108.8*	194.3	183.1	205.0	228.5	261.7	254.8	250.1		
Deficit (-)										
Surplus (+)	-43.1*	-22.2	11.9	16.8	30.6	-45.7	1.6	26.0		
Sind										
Gross Revenue	82.3	76.2	71.9	83.0	95.3	97.6	102.5	92.8		
Gross Expenditure	95.2	82.5	80.8	83.3	106.9	103.1	84.6	102.6		
Deficit (-)										
Surplus (+)	-12.9	-6.3	-8.9	-0.3	-11.6	-5.5	17.9	-9.8		
N-W. F. P.										
Gross Revenue	33.6	32.0	33.1	42.0	47.7	56.5	66.4	63.6		
Gross Expenditure	36.6	34.1	37.7	44.3	49.4	53.3	65.2	66.1		
Deficit (-)										
Surplus (+)	-3.0	-2.1	-4.6	-2.3	-1.7	3.2	1.2	-2.5		

* For the period 15th August to 31st March 1948 only
1. Pakistan 1954-55, Karachi: Pakistan Publications, 1955, p. 34.

TABLE 3¹

Province or state	DEVELOPMENT						
	1948-1949		1949-50		1950-51		1951-
	Amount sanc- tioned	Amount drawn	Amount sanc- tioned	Amount drawn	Amount sanc- tioned	Amount drawn	Amount sanc- tioned
East Bengal	40.0	..	42.1	..	20.0	20.0	33.0
Punjab	50.0	50.0	52.5	52.5	40.0	40.0	45.0
Sind	17.5	..	..	..	17.6	3.5	15.0
N-W. F. P.	5.2	5.2	9.0	4.0	7.5	7.5	15.0
Bhawalpur	..	..	..	..	..	..	..
Others	..	..	..	..	..	..	..
Total	112.7	55.2	103.6	56.5	85.1	71.0	108.0

1. Pakistan 1954-1955, Karachi: Pakistan Publications, 1955, pp. 32-3.

TABLE 3 - continued

LOANS						(In millions of Rupees		
52	1952-53		1953-54		Total	1954-55		Total
Amount drawn	Amount sanc- tioned	Amount drawn	Amount sanc- tioned	Amount drawn	Amount drawn	Amount sanc- tioned	provi- ded in R.E.	Amount sanc- tioned
33.0	29.0	29.0	138.5	65.4	147.4	118.4	..	421.0
45.0	39.0	39.0	121.3	85.4	311.9	110.0	..	461.1
..	2.5	2.5	..	..	6.0	10.8(a)	210.8	52.6
15.0	13.5	13.5	16.3	10.0	55.2	15.5	11.5(a) 6.0(c) 6.3(d)	82.0
..	..	..	38.5	38.5	38.5	9.0	..	47.5
..	..	..	1.7	1.7	1.7	3.3	..	5.0
93.0	84.0	84.0	316.3	201.0	560.7	267.0	234.6	1,069.2

Despite the changes in 1951, the financial position of the provinces did not improve much as the figures in Table 2 illustrate. Most of them had deficits throughout the period from fiscal year 1948 to fiscal year 1955. The financial position of the federal government is given in Table 1, which shows a surplus for each year. The position of Punjab seems to be improved after 1953 primarily due to "more rigorous and efficient methods of collection of provincial taxes by imposition of agricultural income tax, urban immovable property tax, etc."²¹ The more important sources of revenue were irrigation and land revenue, which together accounted for about 36 per cent of the total revenue of the province. The position of East Bengal seems worse than that of the other, because its total revenue was less than one-third of the total provincial revenues of Pakistan and it contained over 50 per cent of the country's population. Its share of the export duty on jute was its largest single source of revenue. Its land revenue and irrigation contributed only 13 per cent of the revenue against 36 per cent in the Punjab. The financial situation of Sind was severely affected by the separation of Karachi from Sind and the influx of refugees. N. W. F. P. faced a series of deficits because of inade-

²¹K. B. Sayeed, Pakistan The Formative Phase, Karachi: Pakistan Publishing House, 1960, p. 374.

quate sources of revenue. Jeremy Raisman, in his inquiry, pointed out, "In the course of my study of the Financial conditions of the North and West Frontier provinces, I was particularly impressed with the inelasticity of the provincial revenues and their inadequacy to finance even the modest schemes of social improvement."²²

This financial weakness of the provinces made them dependent on grants-in-aid and loans from the central government to carry out their constitutional responsibilities. Table 3 illustrates a steady increase, from 1951 onward, in the loans advanced by the central government to the provinces for development purposes. However, the granting of loans to various provinces was dependent on certain conditions. Firstly, the provinces had to submit the scheme to the Development Board for its approval. Secondly, the loans sanctioned were to be spent on the schemes previously approved by the Development Board. Thirdly, provincial governments had to send "Project Reports" to the central government.

Central-provincial financial relations were greatly influenced by an interplay of economic and military forces. The financial weakness of the provinces may be described as a logical outcome of the predominance of military pressure. The Raisman Award and an in-

²²Quoted in K. B. Sayeed, op. cit., p. 376.

crease in the development loans to the provinces (as is shown in Table 3) reflect the economic pressure exerted by the deteriorating economic situation of the provinces. However, these steps did not lead to a marked improvement in the provincial financial position, because the central government retained the major sources of revenue. Although provincial expenses were higher than the central, in view of Indian hostility, the need for security compelled the central government to allocate a major portion of revenue to defence of the country. The top priority given to defence is indicated by the figures in Table I showing the central expenditures incurred for defence. In the final analysis, it may be argued that between the fiscal needs of the provinces and military necessity, the latter ultimately dominated the former and its predominance, in turn, affected the financial condition of the provinces.

III. Central Ascendency in the Administrative Field

The central dominance in the administrative sphere was maintained by a number of provisions enumerated in the adapted Act. Section 122 made it obligatory on the federated units to exercise their executive authority to ensure respect for the laws of the federal legislature which applied in that province or state. Section 126, in general, and subsections 2 and 5 in particular, authorized the federal executive to give directives

to a province as to the manner in which the executive authority thereof was to be exercised for the purpose of preventing any grave menace to the peace or tranquility or economic life of Pakistan or any part thereof. Once a directive was issued, the provincial governments had to comply with it. In the PRODA²³ proceedings, instituted against Mr. Hamidul Haq Choudhary, East Bengal Minister for Finance, Commerce and Industries, it was argued by the special council for PRODA that Mr. H. H. Choudhary did not comply with the directive issued by the Secretary-General of Pakistan to the Government of East Bengal under Section 126 (1) and as such he was guilty of misconduct.²⁴

Although maintenance of law and order in a province was a provincial subject, the central government, with the help of civil servants in the provinces, used to control provincial situations. The Report of the Court of Inquiry on Punjab Disturbances of 1953 furnishes an example that the Provincial Government of the West Punjab was sending fortnightly reports to the central gov-

²³The Public and Representative Offices Disqualification Act, 1949, usually called PRODA, was enacted in 1949 & later repealed in 1954 by the Constituent Assembly of Pakistan. It was sub-titled 'An Act to provide for the debarring from public life for a suitable period, of persons judicially found guilty of misconduct in any public office or representative capacity or in any matter relating thereto!'

²⁴Dawn, (Karachi), June 20, 1951.

ernment on the condition of law and order in the province.²⁵ The PRODA proceedings against Mr. H. H. Choudhary shows how the central government was made aware of the activities of provincial ministers. During the proceedings, it was revealed by Mr. Aziz Ahmad, the Chief Secretary,²⁶ that under instructions from the Central Government, he had effectively stopped the export of steel drums to India which had been ordered by Mr. H. H. Choudhary.²⁷ After the PRODA proceedings, it was asserted by the politicians in the Constituent Assembly that the Chief Secretary used to send fortnightly reports on the activities of Provincial Ministers to the Central Government.²⁸

The use of PRODA was another weapon in the hands of the centre to exert pressure on the provincial politicians. The Act provided that the Governor-General, by an order, could debar, from public life for a period of ten years, any person found guilty of miscon-

²⁵ See Report of the Court of Inquiry on Punjab Disturbances, Lahore: Government Printing Press, 1954, pp. 310-328.

²⁶ The Chief Secretary was the permanent Central civil servant. He was the head of the entire civil service of the province.

²⁷ Dawn, (Karachi), September 20, 1950.

²⁸ C. A. P. Debates, Vol. I, No. 68, 9th February, 1956, p. 2778.

duct in any public office or representative capacity or in any matter relating thereto. The proceedings could be instituted on the reference made by the Governor-General or the Governor of the charges to the Court or to a special Judicial tribunal. During five years of PRODA, seven cases involving four former Chief Ministers of Provinces were referred to a Judicial tribunal. In four cases Disqualification was imposed on four provincial ex-ministers.²⁹ PRODA was severely criticised on the ground that it might be used as a political weapon against those politicians who incurred the displeasure of the Central Government. The Act was ultimately repealed in 1954 by the Constituent Assembly.

Another instrument of central control was the Provincial Governor. He was appointed by the central authorities and held office during the pleasure of the Governor-General. According to Section 51, the Governor in his relation with his ministers was to act as an agent of the Governor-General. Subsection 5 of Section 51 laid down "in the exercise of his functions under this section in respect of the choosing and summoning and the dismissal of ministers, the Governor shall be under the general control of, and comply with such directions, if any, as may

²⁹Mr. M. A. Khuhro (Sind); Kazi Fazlullah (Sind); Aga Ghulam Nabi Khan Pathan (Sind); and Himdul Haq Choudhary (East Bengal).

from time to time be given by the Governor-General."

This power was exercised in actual practice on two occasions by the Central Government. The first ministry to be dismissed under Section 51 (5) by the Governor under the instruction of Quaid-i-Azam Mohammad Ali Jinnah was that of Khan Saheb of the North-West Frontier Provinces. Dr. Khan Saheb was the Chief Minister of N. W. F. P. at the time of independence. Soon after the people of N. W. F. P. had decided by referendum in favour of Pakistan, demands were made by the League circles for the dismissal of the Congress Ministry of Khan Saheb. Another ministry to be dismissed by a Governor was that of Mr. M. A. Khuhro of Sind in 1948, on the grounds of maladministration and gross misconduct. In cases when the centre had brought about the downfall of a ministry, it often sought to impose its own candidate as successor. Persons who were not members of the Provincial Assembly were appointed as Chief Ministers. Mr. Feroz Khan Noon, who was Governor of East Bengal, was appointed, in 1953, Chief Minister of Punjab. Similarly, Sardar Abdur Rashid was promoted from Inspector-General of Police to Chief Minister in the N. W. F. P. in 1953.

Another factor that contributed to the centralization of power was the highly centralized structure of the Muslim League. Both Prime Ministers Mr. Liaqat Ali Khan and Khawaja Nazimuddin were successively president

of the Muslim League. In this capacity each had major powers of supervision and control of provincial party affairs. The Muslim League remained the dominant ruling party at the centre and the provinces until 1954, when it was defeated in the East Bengal provincial elections.

In the light of the preceding discussion, it may be concluded that the federal structure which was operative under the Interim Constitution was highly centralized. The government was federal so far as the centre decided to make it so. Until 1949, the interim constitution could be amended by an order of the Governor-General and subsequently by an Act of the Constituent Assembly. The modifications made to the Act after Independence extended the scope of central authority. Financial dependence of the provinces and frequent central interference in the provincial matters through various ways and means resulted in provincial dependence on the centre which nullified the federal principle which essentially implies the co-ordinate status and interdependence of the general and regional governments.

CHAPTER IV

PROBLEMS INVOLVED IN DRAFTING THE CONSTITUTION OF 1956

While a highly centralized government was at work under the interim constitution, the process of drafting the future constitution for Pakistan was going on simultaneously. The framers had to grapple with a number of complicated issues - language, representation and division of powers - which delayed an agreement on the constitution. Various proposals were submitted to the Constituent Assembly to solve these problems but it took a considerable time before a compromise could be reached. Before discussing the issues with reference to the recommendations of the different constitutional drafts, various stages in the constitution making are described briefly as follows.

The "Objectives Resolution", passed in March 1949, by the Constituent Assembly, which enumerated the aims and objects of the constitution, indicated a broad outline on which the future constitution of Pakistan was to be based. The Resolution laid down that, territories now included in or in accession to Pakistan and such other territories as may hereafter be included or acced-

ed to Pakistan shall form a federation.¹ The decision in favour of a federal form of government was the result of geographical, cultural and linguistic differences between the two parts of Pakistan. All subsequent drafts recommended a federal form of government.

The second step in the constitution making was the interim report of the Basic Principles Committee. The report was presented by Prime Minister Liaquat Ali Khan to the Constituent Assembly in 1950. The report recommended: (a) residuary powers should be vested in the Centre; (b) federal legislature should be bi-cameral with equal powers for both the houses, the House of Units was to consist of representatives elected by the federating units on the basis of equal representation; (c) Urdu should be the national language of Pakistan.

After the rejection of the report by East Pakistan (due to reasons which will be discussed later), the second draft was submitted to the Constituent Assembly in 1952 by Prime Minister Khawaja Nazimuddin. The draft recommended a bi-cameral system of legislature and the vesting of residual powers in the centre. The House of People was to consist of 400 seats and the House of Units of 120 seats both equally divided between East and West Pakistan.

¹C. A. P. Debates, Vol. V, No. 5, March 7, 1949, p. 100.

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report from the Secretary of the Treasury on the state of the Union.

3. The third part is a report from the Secretary of the Navy on the state of the Navy.

4. The fourth part is a report from the Secretary of the War on the state of the War.

5. The fifth part is a report from the Secretary of the Interior on the state of the Interior.

6. The sixth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

7. The seventh part is a report from the Secretary of the Commerce on the state of the Commerce.

8. The eighth part is a report from the Secretary of the Education on the state of the Education.

9. The ninth part is a report from the Secretary of the Health on the state of the Health.

10. The tenth part is a report from the Secretary of the Labor on the state of the Labor.

11. The eleventh part is a report from the Secretary of the Finance on the state of the Finance.

12. The twelfth part is a report from the Secretary of the Justice on the state of the Justice.

13. The thirteenth part is a report from the Secretary of the State on the state of the State.

14. The fourteenth part is a report from the Secretary of the War on the state of the War.

15. The fifteenth part is a report from the Secretary of the Navy on the state of the Navy.

16. The sixteenth part is a report from the Secretary of the Interior on the state of the Interior.

17. The seventeenth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

18. The eighteenth part is a report from the Secretary of the Commerce on the state of the Commerce.

19. The nineteenth part is a report from the Secretary of the Education on the state of the Education.

20. The twentieth part is a report from the Secretary of the Health on the state of the Health.

21. The twenty-first part is a report from the Secretary of the Labor on the state of the Labor.

22. The twenty-second part is a report from the Secretary of the Finance on the state of the Finance.

23. The twenty-third part is a report from the Secretary of the Justice on the state of the Justice.

24. The twenty-fourth part is a report from the Secretary of the State on the state of the State.

25. The twenty-fifth part is a report from the Secretary of the War on the state of the War.

26. The twenty-sixth part is a report from the Secretary of the Navy on the state of the Navy.

The second draft also failed in reconciling the differences between the leaders of East and West Pakistan on the issue of representation. The next step was the 'Mohammad Ali Formula' submitted by Prime Minister Mohammad Ali in 1953. The Formula provided that the residuary powers should be vested in the president. Each constituent unit was to have 10 seats in the upper house. The lower house was to compose of 300 members, 165 from East and 135 from West Pakistan. The formula recommended that Urdu and Bengali should be the official languages of Pakistan. The Formula was adopted by the Constituent Assembly in October, 1954.

The first Constituent Assembly had almost completed its task of framing the constitution, when it was dissolved in 1954 by the Governor-General on the grounds that it had lost the confidence of the people. The dissolution blocked the constitution making function and led to a series of legal disputes and constitutional controversies. During this period of constitutional crisis,² the Judiciary played a very important and commendable role. The Federal Court, in its advisory jurisdiction, gave the opinion that the 'Governor-General

²For a full discussion of the important Constitutional cases of Tamizuddin Khan v. Federation of Pakistan, and Usif Patel v. the Crown, see I. Jennings, Constitutional Problems in Pakistan, London: Cambridge University Press, 1957.

had the legal authority to dissolve the Constituent Assembly under Section 5 of the Indian Independence Act.³ The Court further held that the Governor-General had no authority to frame a constitution by ordinances and that the task of framing a constitution had to be performed by a Constituent Assembly. In accordance with the advice of the Federal Court, the Governor-General, by an order in 1955, set up a new Constituent Assembly which had all the powers of the first Constituent Assembly. The second Constituent Assembly ultimately succeeded in resolving the problems which had delayed the framing of the constitution.

A federal form of constitution was unanimously agreed upon in 1949 with the passing of the "Objectives Resolution". But serious conflicts developed between the two wings of the country on the details of the federal structure of the constitution. Before discussing the problems of representation and division of powers which held up the progress of constitution-making for a period of nine years, it seems desirable to go into those factors that embittered East-West relations, thereby making the solution of the problems a complicated task.

The lack of homogeneity between East and West

³Ibid., pp. 307-308.

Pakistan was due largely to the geographical division of the country and cultural differences which developed the feeling of separation.⁴ Besides these natural factors, other forces, discussed as below, were at work which played a significant role in producing the East-West conflict. The existence of these elements delayed the adoption of a constitution for nine years after independence.

I. Factors Producing the East-West Controversy

A. Watts, describing the dynamic character of federal societies, remarked that the unity generated by nationalist movements in the drive for freedom from alien rule may be threatened with the evaporation of nationalism after the achievement of independence.⁵ In the case of Pakistan, the spirit of homogeneity and oneness between the people of both wings, which was the main force behind the independence movement, began to degenerate after the death of Quaid-i-Azam Mohammad Ali Jinnah.

Federation is a delicate balance between the conflicting demands for union and separation. To maintain the equilibrium between these two conflicting forces, strong national leadership is needed, especially in the early years after the establishment of federa-

⁴Refer to Chapter I.

⁵Watts, op. cit., p. 103.

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1960

tion.⁶ The death of Quaid-i-Azam Mohammad Ali Jinnah was a severe blow to national unity. The Muslims of pre-partition India were united in a unique way under his dynamic leadership. Under the banner of the Muslim League, they fought for Pakistan and did not distinguish amongst themselves as Bengalis, Punjabis, Sindhis, and so on. Jinnah's wisdom, sagacity and guidance was most needed in the early days of independence, not only for political and economic stability, but for the settlement of controversial issues on the future constitution of Pakistan.

The loss of honest and sincere leaders also affected the future prospects and popularity of the Muslim League. The League, which was a strong unifying force in the country, began to disintegrate after the death of Liaqat Ali Khan. Group rivalry and fissiparous tendencies developed in the League and it became a coterie of office seekers and vested interests.⁷ The League lost its popularity and prestige, so much so, that it experienced a crushing defeat in the East Pakistan provincial elections in 1954.

These occurrences weakened the spirit of national unity to a considerable extent. The forces of diversity

⁶Ibid., p. 109.

⁷Choudhary, op. cit., p. 283.

became stronger and geographical and cultural differences which had been dormant so far, became active. These differences had an important bearing on constitution-making in Pakistan. The controversies over representation and the division of powers reveal the schisms which existed.

B. One reason for the mutual fear and distrust between East and West Pakistan was the lack of inter-regional contact. Inadequate communications prevented the growth of mutual understanding between the people of the two wings. Watts, emphasising the importance of inter-regional communications in a federation, points out that national unity after federation is affected by the degree of inter-territorial contact which is made possible by the system of internal communication. Where communications have remained relatively inadequate, regional feelings of isolation and remoteness gathered strength.⁸ The following statement gives an insight into the situation existing in Pakistan.

Here in Dacca [the capital of the East Wing] one feels that Karachi is so far away. 'We move in another world' a non-Bengali journalist said here the other day. . . News from West Pakistan in Dacca papers is scanty. . . The teleprinter link between Karachi and Dacca is down most of the time. . . Press telegrams from West Pakistan take at least four or five hours to reach here . . . People here feel cut off.⁹

⁸Watts, op. cit., pp. 105-106.

⁹Quoted in H. Feldman, A Constitution for Pakistan, London: Oxford University Press, 1955, p. 14.

C. Resentment in East Pakistan was also a product of economic factor. At the time of partition both parts were poor and underdeveloped, but East Pakistan was economically more backward. For many decades the progress of this area, particularly of the Muslim population, was neglected because of Hindu domination in the administration and economy.¹⁰ East Bengal gave solid support to the Pakistan movement because the Bengal peasants expected that the establishment of Pakistan would improve their situation. By providing them an opportunity to form their own government, they would control the economic development of their province.

After independence the central and provincial governments worked vigorously on the development programme, but the economic situation in East Pakistan did not improve much. The First Five Year Plan of Pakistan, introduced in 1956, demonstrated the fact that the rate of development in East Pakistan had not been as high as it had been in West Pakistan.¹¹ The financial arrangements made after independence had weakened the East Pakistan economy.¹² Mr. Abul Mansoor Ahmad, expressing East Pakistan's grievances, said that

¹⁰K. Callard, Pakistan: A Political Study, London: George Allen & Unwin, 1957, p. 157.

¹¹The First Five Year Plan, 1955-1960, Karachi: Government of Pakistan Press, 1956, Vol. I, p. 8.

¹²Refer to Chapter III.

East Bengal was never a deficit province At the time of partition we were a surplus province . . . we had a surplus of Rs.1 crore 88 lakhs in the first and second year . . . The sales tax was taken over by the Centre in 1949. From that time East Pakistan has been a deficit province and the deficit is growing bigger and bigger.¹³

The major source of grievance was the distribution of available financial resources. East Bengal is poorer than West Pakistan.¹⁴ As a result of its dense population and vast land under jute cultivation, East Pakistan is a food deficit area. Bengalis claimed that the chronic poverty of their province should be a primary concern of national policy, and that more federal resources allocated to improve the economic situation of the province. They complained that while the export of jute (exclusively produced in East Pakistan) provided a large portion of the country's foreign exchange, the province was not getting its due share of revenue from national government. The central government contended that its first task was to raise national income by spending federal resources wherever they would bring the greatest return. Mr. Abul Mansoor Ahmad, expressing the grievances of East Pakistan in the Constituent Assembly, said:

¹³C. A. P. Debates, Vol. I, No. 52, Jan. 17, 1956, pp. 1847-1848.

¹⁴During 1954-55, estimated per capita income in East Bengal was Rs.5.6 whereas for the same period, it was Rs.12.0 in Punjab, Rs.21.1 in Sind, and Rs.20.1 in N.W.F.P. Quoted in Callard, op. cit., p. 156.

I will show, Sir, from statistics published by our government that the share of East Pakistan to the Federal revenues from 1947-48 to 1954-55 has been 168 crores and 14 lakhs. During this period, West Pakistan contributed 553 crores and 53 lakhs to the Federal revenues. These figures may make our West Pakistani brothers, like Mr. Gurmani, boast and say: "Look! East Pakistan is contributing only 18 per cent, West Pakistan contributes more than treble." But, Sir, look at the expenditure side. This is the expenditure. The central government has spent during these nine years, 42 crores and 66 lakhs in East Pakistan as compared to 790 crores and 67 lakhs spent in West Pakistan. Therefore, Sir, we have got back much less than what we have contributed.¹⁵

Although the authenticity of the figures placed by Mr. Abul Mansoor Ahmad was challenged,¹⁶ however East Pakistanis believed that the greater part of federal money had been spent in West Pakistan, particularly on defense and the federal capital, Karachi. This is evident from the following figures which show total financial allocations by the centre to the provinces for the period 1947-1955.¹⁷

	<u>West Pakistan</u> <u>Rs. (Million)</u>	<u>East Pakistan</u> <u>Rs. (Million)</u>
Financial Assistance	10,000	1,260
Capital Expenditure	2,100	620
Grants in Aid	540	180
Educational Grants	1,530	240

¹⁵C. A. P. Debates, Vol. I, No. 51, Jan. 16, 1956, pp. 1818-1819.

¹⁶Ibid., pp. 1820-1822.

¹⁷DAWN, (Karachi), Jan. 9, 1956, p. 3.

	West Pakistan Rs. (Million)	East Pakistan Rs. (Million)
Foreign Aid Allotted	730	150
Defense Expenditure	4,650	100
Foreign Trade (Exports)	4,830	4,940
Foreign Trade (Imports)	6,220	2,580
	<hr/>	<hr/>
Totals	30,600	10,070

However, in certain cases East Bengal did receive special treatment. Sir Jeremy Raisman, in his report on the allocation of revenues between the central and provincial governments, pointed out that East Bengal received a share of the jute export duty and that Sind received nothing from the proceeds of the cotton export duty.

D. Another factor which gave rise to Bengali resentment was inadequate Bengali representation in the central civil service. The educated Bengali resented the fact that most of the senior posts in the civil service were in the hands of West Pakistanis. This was due to the fact that before partition very few Muslims had been recruited into the Indian Civil Service. Most of the important posts in the civil service were occupied by Hindus, who had left for India, leaving a large number of vacancies in the administration. At the time of partition, there was no Muslim officer of the rank of Secretary, and there were only four officers of the rank of Joint Secretary.¹⁸ The number of Bengali Muslims in the civil ser-

¹⁸Quoted in Sayeed, op. cit., p. 391.

vice was insignificant. At the time of partition, only three Bengali Muslims in the Indian Civil Service opted for Pakistan. As a result, many West Pakistanis were brought into East Bengal to staff the provincial administration, which created doubts and apprehensions in the minds of the East Bengalis. Professor Mahmood Hussain, a member of the Muslim League party and former Minister for Education and Refugee Rehabilitation, pointing out the inadequate Bengali representation said, "One could walk through the secretariat and not find a single Bengali among the secretaries of the Ministeries."¹⁹ Mr. Abul Mansoor Ahmad, commenting on the parity formula in the draft constitution, presented the following figures to the Constituent Assembly to show the disproportionate representation in the central administration.

Central Services:²⁰

	<u>West Pakistan</u>	<u>East Pakistan</u>
Secretaries	19	-
Joint Secretaries	38	3
Deputy Secretaries	123	10
Under Secretaries	510	38

The same disproportionate representation existed in the Defense Services. The central government's policy to recruit from the "martial races" (Punjab and N.W.F.P.

¹⁹New York Times, July 18, 1954, p. 4.

²⁰C. A. P. Debates, Vol. I, No. 52, Jan. 17, 1956, pp. 1843-1844.

have a strong martial tradition) aroused bitterness in East Bengal. Bengali leaders demanded the establishment of a defense force to be located in their province. In particular, they wanted the naval headquarters to be in East Pakistan. This demand was included in the United Front's 21 points programme.²¹ The following figures provide a background to the origin of the feeling of resentment.

Defence Services:²²

	<u>West Pakistan</u>	<u>East Pakistan</u>
Generals	1	-
Lt. Generals	3	-
Major Generals	20	-
Brigadiers	34	1
Colonels	49	-
Lt. Colonels	198	2
Majors	590	10
Airforce Personnel	640	60
Naval Officers	593	7

East Pakistan's grievances, which were the outcome of unequal distribution of financial resources and disproportionate representation in the administration and defense services, played a significant role in the constitutional controversy over the future federal structure of government. The demand from East Pakistan for a weak centre and maximum provincial autonomy was largely rooted in its economic discontent and apprehension of the domination of West Pakistan.

²¹See Chapter I, Footnote 21.

²²C. A. P. Debates, Vol. I, No. 52, Jan. 7, 1956, p. 1845.

The contentious issues of language, representation and the division of powers reflect this feeling of distrust and fear.

II Language Issue

The linguistic controversy, which was crystallized around Urdu and Bengali, was a major factor in the East-West conflict. Pakistan is a multilingual state. It has been said earlier²³ that different languages are spoken in West Pakistan, while East Pakistan is linguistically homogeneous. Urdu is not a language of any region, yet it is regarded as the common language of West Pakistan. It was the principal language of Muslims in India before partition and as such, played a significant role in the Hindu-Muslim rivalry. It is understood over a great part of the sub-continent, where as Bengali is confined to a single province. The issue at stake was whether Pakistan should have a single state language, Urdu, or two, i.e., Urdu and Bengali.

The supporters of Bengali based their claim on two grounds. One was that Bengali is the language of the majority. The second was that a bilingual formula would lead to stronger ties and better understanding between the two wings and thus help to strengthen the bonds of unity. The advocates of a single language argued that

²³Refer to Chapter I.

linguistic unity was the essential prerequisite to the development of a sense of unity and solidarity between the people of the two wings. In the presence of so many diverse factors (geographical and cultural), the absence of linguistic unity would tend to widen the already existing gap between the two wings. They further asserted that when Muslims of India declared themselves to be a nation with their distinct religion, culture and language, they had Urdu in their minds and not any provincial language.

At the time of independence, an understanding existed among the Muslim League leaders that Urdu would be the national language of Pakistan. In 1948, Prime Minister Liaqat Ali Khan, replying to Mr. D. N. Dutta's (a Hindu-Bengali Congress member) motion for the use of Bengali in the House along with Urdu, said:

Pakistan is a Muslim State and must have as its lingua franca the language of the Muslim nation. . . . (the mover) should realize that Pakistan has been created because of the demand of a hundred million Muslims in this sub-continent and the language of a hundred million Muslims is Urdu. . . . It is necessary for a nation to have one language and that language can only be Urdu and no other language.²⁴

Later in March 1948, addressing a public meeting at Dacca, Quaid-i-Azam Mohammad Ali Jinnah declared,

²⁴C. A. P. Debates, Vol. II, No. 2, Feb. 25, 1948, pp. 15-17.

Let me tell you in the clearest language that there is no truth that your normal life is going to be touched or disturbed so far as your Bengali language is concerned. But ultimately it is for you, the people of this province, to decide what shall be the language of your province. But let me make it very clear to you that the state language of Pakistan is going to be Urdu and no other language. Anyone who tries to mislead you is really the enemy of Pakistan. Without one state language, no nation can remain tied up solidly together and function.²⁵

Jinnah's arguments in favour of one state language in the interest of national unity were subsequently not acceptable to East Bengal. People in East Pakistan remained dissatisfied over the language issue. This discontent became visible when the Interim Report (first draft) of the proposed constitution was published. The Report stated that Urdu should be the national language of the State.²⁶ The people of East Bengal vehemently protested against the Report. Students, parties and press launched a campaign to make Bengali one of the state languages of Pakistan. The demand for granting Bengali the status of a state language was incorporated in the United Front's 21 Points programme. This agitation in East Bengal compelled the Constituent Assembly to accept the demand of East Pakistan. As a result the "Mohammad Ali Formula" (third draft), which was adopted by the Constituent Assembly in 1954, recognized

²⁵ Jamiluddin Ahmad, op. cit., Vol. II, p. 490.

²⁶ Basic Principles Committee Report, Karachi: Government of Pakistan Press, 1950, Par. 120, cited hereafter as B. P. C. Report.

both Urdu and Bengali as official languages.²⁷ At the same time it provided for the use of English as an "official language for twenty years". It expressed the hope that "the state should take all measures for the development and growth of a common language."²⁸ Thus the formula, by accepting the demand of East Bengal, removed a major source of grievances. The bilingual solution was considered to be the only solution given the existing circumstances.

Besides the language issue, the framers confronted three other crucial issues in their course of constitution-making. They were: (1) the place of Islam in the new constitution; (2) the question of representation; and (3) the nature of the division of powers. The solution of the first problem was made difficult because of the divergent views held by the two conflicting groups of Ulema (experts in religious teachings) and intellectuals regarding the structure and nature of an Islamic state. The framers ultimately succeeded in incorporating Islamic principles within a democratic framework. The subject matter of this dispute does not fall within the scope of this study.

²⁷B. P. C. Report (as adopted), Karachi: Government of Pakistan Press, 1954, Par. 276 (1).

²⁸Ibid., Par. 276 (6).

III The Problem of Representation

After adopting the "Objectives Resolution" which was regarded as an "important occasion in the life of Pakistan, next in importance only to the achievement of independence",²⁹ the Constituent Assembly appointed the Basic Principles Committee in 1949. Its task was to report on the main principles of the future constitution of the country. The Committee set up three sub-committees concerned with Federal and Provincial constitutions, the Franchise and the Judiciary. The sub-committee on the Federal and Provincial Constitution was the largest consisting of twenty members.

The first Constituent Assembly had to grapple, over a long period, with the issue of representation. East Bengal, on the basis of its larger population, demanded a majority of seats in the central legislature. Punjab, which was the largest single geographic unit and the second largest in population, feared that the acceptance of Bengal's demand would result in perpetual rule by one province (Bengal) over the entire country. On the basis of these apprehensions, Punjab contended that the superiority in population should not be the decisive factor, but the size of the area, its richness and its contribution to industry and business should also be taken into consideration. In

²⁹C.A.P. Debates, Vol. V, No. 1, March 7, 1949, p. 2.

such a situation the task before the Basic Principles Committee was not an easy one. It had to find a method of providing for the representation of the various provinces in the legislature in such a way that no single unit would be in a position to dominate the others.

The committee submitted its report in 1950. The Report closely resembled the Government of India Act, 1935. Mr. Sardar Shaukat Hayat commenting on this resemblance said that "so far as this constitution is concerned, if Mr. Churchill had been the leader of this House (which God forbid), he would have drawn up just such a constitution."³⁰

In Part III and Chapter II of the Report the committee gave its proposals for representation. It recommended a bicameral legislature consisting of: 1) the House of Units, representing the legislature of the units; and (2) the House of People, elected by the people. It did not make any suggestions on the composition and size of the House of the People, as the sub-committee on Franchise had not completed its work by that time. The committee made clear that "existing provinces, including Baluchistan, should have equal representation in the House of Units."³¹ It was further laid down that the "two Houses

³⁰Ibid., Vol. VIII, Oct. 6, 1950, p. 181.

³¹B. P. C. Report, Karachi: Government of Pakistan Press, 1950, p. 39.

of the federal legislature should have equal powers and, in case of dispute on any question, a joint session of both the houses should be called for taking decision thereon."³² The power to summon the joint session, which was vested in the Head of the State, was to be exercised in the following cases:

- 1) Conflict between the Houses of the legislature.
- 2) Election and removal of the Head of the State.
- 3) Consideration of the Budget and other money bills.
- 4) Consideration of a motion of no-confidence against the Cabinet.

The ministry was made responsible to both the Houses of legislature.³³ Under the parliamentary system, the cabinet is usually responsible to the Lower House which represents the people. By making the ministry responsible to both the Houses, the draft would have made the working of cabinet government difficult.

The provision for a bicameral system was based on the practice and tradition of other federal states, such as United States, Canada, Australia and India. The device of the second chamber in a federation is considered necessary for giving representation to the federating units. It is designed to reflect the interest and views of the constituent units either as regions or as political entities, and its powers are intended to provide a means of

³²Ibid., p. 40.

³³Ibid., p. 39.



Figure 1

protecting those states and their inhabitants against improper or injurious federal measures.³⁴ Thus the upper house is a device for bridging the gap between the member states and the federation.

The structure of the upper house in federal systems is determined by two concerns: a) a fear on the part of smaller states of being suppressed by the larger and more populous states, and b) the fear of the states in general of being overwhelmed by the central government.³⁵ The task of removing both these fears has been a difficult one in the formation of federal states. The fear of domination from larger states is usually expressed by the smaller states, therefore they are generally assigned more seats than they could claim on the basis of their population alone.³⁶ But the situation in Pakistan was unique in the sense that fear of domination was expressed not by a smaller unit but by the most populous unit of East Pakistan.

The first draft was severely criticised in East Pakistan on three grounds. Firstly, it did not provide East Pakistan an overall majority in the federal legislature on the basis of its population. It was felt that the composition of the new legislature would transform Bengal's

³⁴Bowie and Friedrich, Studies in Federalism, Toronto: Little Brown, 1954, p. 4.

³⁵Ibid., pp. 7-8.

³⁶Ibid., p. 8.

numerical majority of the population into a minority of seats. The principle of equal representation in the upper house was opposed on the ground that it would bring East Pakistan, with more than half of the total population, in line with the other provinces (like Baluchistan), which were sparsely populated. The third cause of discontent with the report was the announcement that Urdu would be the national language of Pakistan (this issue has been discussed in the earlier part of this chapter). Expressing the discontent and apprehensions of East Pakistan, Mr. Nur Ahmad, a Muslim League member, said in the Constituent Assembly that "In East Bengal there is a growing belief...I must say that it is a wrong impression...that there are principles in the Report which, if adopted, will reduce the majority of East Bengal into a minority, and it will turn East Bengal into a colony of Pakistan."³⁷ The agitation and protest against the draft in East Pakistan led Prime Minister Liaquat Ali Khan to announce the postponement of the deliberations and to invite suggestions that might be made by the people with regard to the basic principles of the constitution.

On the basis of the findings of the sub-committee appointed by the Constituent Assembly to examine the suggestions, a second draft was presented to the Constituent

³⁷C. A. P. Debates, Vol. VIII, No. 6, Nov. 21, 1950, p. 183.

Assembly by the new Prime Minister, Khwaja Nazimuddin, in 1952.

The second draft adopted the principle of parity between East and West Pakistan and made an important contribution towards solving the problem of representation.³⁸ The proposed federal legislature was to comprise two houses. The House of Units was to consist of one hundred and twenty members, sixty from East and sixty from West Pakistan, to be elected on the basis of the principle of proportional representation.³⁹ Sixty seats for West Pakistan were distributed as follows:

Punjab	- 27	Baluchistan	- 2
Sind	- 8	Baluch States	- 2
N. W. F. P.	- 6	Khairpur	- 2
Tribal Areas	- 5	Capital of	
Bhawalpur	- 4	Federation	- 4
			<u>60</u>

The House of People was to consist of four hundred members, half from East and half from West Pakistan, to be elected directly by the voters. The seats allotted to West Pakistan⁴⁰ were divided as follows:

Punjab	- 90	Baluchistan	- 5
Sind	- 30	Baluch States	- 5
N. W. F. P.	- 25	Khairpur	- 4
Tribal Areas	- 17	Capital of	
Bhawalpur	- 13	Federation	- 11
			<u>200</u>

³⁸ Choudhary, op. cit., p. 110.

³⁹ Report of the B. P. C., Karachi: Government of Pakistan Press, 1952, p. 11.

⁴⁰ Ibid., p. 14.

The second draft rejected the principle of equality of powers in the two houses. The House of People was to enjoy real authority in matters of budget, money bills and motions of confidence. The ministry was to be collectively responsible to the House of People only.⁴¹ Any conflict between the two houses was to be settled in a Joint Session of both houses by a simple majority vote.

Though it was claimed that the second draft would bring about a constitutional balance of power as well as responsibilities between the two wings of Pakistan, it did not receive a much better welcome than its predecessor. This time the reaction was adverse in West Pakistan. Bengali members continued to feel that they had not received their due share, while the belief in Punjab was that too much had been conceded to the East wing. Punjab demanded representation in the Lower House on a straight population basis and in the Upper House on the basis of equality of the federating units. It should be borne in mind that the first draft containing such provisions was rejected by East Pakistan and the framers had to modify those proposals to meet their demands. The opposition in Punjab to the second draft compelled the Constituent Assembly to once again postpone its deliberations for an indefinite period. No compromise seemed possible in the face of the East-West

⁴¹Ibid., p. 10.

mutual distrust and difference of opinion on the issue of representation. Mr. Nurul Amin explained the gloomy situation in the Constituent Assembly in these words,

It is within the knowledge of everybody that on account of this difference of opinion between East Bengal and West Pakistan in the matter of composition of the House, the work on constitution-making was stopped. . . the deadlock. . . is working as a dead weight on the nation. The nation is going to lose confidence in the leaders, in those who are at the helm of the Administration.⁴²

In 1953, another attempt was made by Prime Minister Mohammad Ali to resolve the constitutional deadlock. He submitted a new formula known as the "Mohammad Ali Formula" to settle the differences between the leaders of East and West Pakistan. The formula recognized both factors: population of East Pakistan and area of West Pakistan. Since West Pakistan had a greater area, it was given a clear majority in the House of Units. The House of Units was to have 50 seats, to be equally divided among the five units of East Bengal, Punjab, N. W. F. P., Sind and Baluchistan. As East Pakistan had the majority of the total population, it was granted a majority of seats in the Lower House. The Lower House was to consist of 300 members, of whom 165 would be elected from East Pakistan and the remaining 135 from West Pakistan.⁴³

⁴²C. A. P. Debates, Vol. XV, Oct. 14, 1953, p. 183.

⁴³Report of B. P. C., (as adopted by the Constituent Assembly), Karachi: Government of Pakistan Press, 1955, p. 10.

The formula provided that, in case of a conflict between the two houses, the matter was to be decided in a Joint Session of the two houses, by a majority vote including at least thirty percent of the members from each zone. The seats in both houses were distributed in such a way as to ensure parity and interdependence between East and West Pakistan in the Joint Session. This provision was made to remove the fear of domination from either of the two zones. Prime Minister Mohammad Ali, throwing light on this provision, said that no government could be formed or could continue in office at the centre unless it had amongst its supporters at least thirty percent of the members present and voting from each zone.⁴⁴

The formula was criticised however, on the ground of its thirty percent clause. It was believed that the clause might hinder the smooth working of the constitution and result in complete constitutional deadlock.

The problem of representation, which had created a deadlock in the process of constitution-making, was simplified in 1955, with the unification of West Pakistan. The One Unit Act of 1955, passed by the second Constituent Assembly, merged nine units⁴⁵ into a single

⁴⁴C. A. P. Debates, Vol. XV, No. 2, Oct. 7, 1953, p. 16.

⁴⁵Punjab, Sind, N.W.F. Provinces, Baluchistan, Baluchistan States Union, Bhawalpur, Khairpur, Karachi and the States of the N. W. Frontier.

province of West Pakistan. Prior to the Act, West Pakistan was divided into three Governor's Provinces, one Chief Commissioner's province, a number of states which had acceded to Pakistan and the tribal areas. Geographically, these units formed a homogeneous block with some linguistic and ethnic distinctions but with easy communications and no natural barriers. All units formed part of the Indus river basin, and depended upon a single port - Karachi. Economic disparity existed among the different units. Some were rich and economically advanced while some were too poor to maintain adequate machinery of government and to undertake large scale development programmes. The Baluchistan states, with a revenue of less than Rs. 6,000,000 were not able to operate a full scheme of provincial self-government. Bhawalpur and Khairpur were the rich units in per capita revenue. In a federation, population, size and wealth of the component regions determine their capacity to bring pressure on the federal government. Sharp disparities in population, area and wealth of the federating units often result in domination by more populated and wealthy area over smaller units.⁴⁶ To remove, or at least to reduce such disparity and to achieve economic and administrative benefits, the component units are often reorganised to form more suitable groups.⁴⁷ Similar considerations pre-

⁴⁶Watts, op. cit., p. 147.

⁴⁷Ibid., pp. 145-146.

vailed in Pakistan in merging the different units of West Pakistan into one single unit. From the point of view of administration and economy, the prevailing division of the country was considered highly unsatisfactory and wasteful.⁴⁸ Prime Minister Mohammad Ali giving reasons for the merger, said, "For the unity of West Pakistan there are many reasons, reasons of economic development, of administrative convenience, of the benefits to the people. . ."⁴⁹ It was also expected that the unification would remove provincial rivalry and jealousy and would bring about national unity. The massive population of East Pakistan would be balanced by the size and wealth of West Pakistan. Prime Minister Mohammad Ali contended that the unification of West Pakistan would achieve national unity and curb the evils of provincialism. He said that "In the national sphere two units will come together on a basis of equal partnership in the Centre."⁵⁰ Thus the Act was designed to achieve administrative efficiency, reduce the expenses and simplify the federal structure of the new constitution by placing the two provinces on an equal footing.

However, the Act did not get full support from all the units, especially from Sind and N. W. F. P., who

⁴⁸C. A. P. Debates, Vol. I, No. 25, Sept. 15, 1955, pp. 784-818.

⁴⁹Ibid., Vol. I, No. 38, Sept. 30, 1955, p. 1470.

⁵⁰Ibid., Vol. I, No. 25, Sept. 15, 1955, p. 817.

believed that unification would result in the control of West Pakistan by Punjab. Mr. Suhrawardy pointed out that "there is a suspicion in the minds of the people of the minor Provinces; that this One Unit Bill is being enacted in order that the Punjab . . . should dominate both in the Centre and in the Unit."⁵¹ When the issue was discussed in the first Constituent Assembly before its dissolution, the members from Punjab fully supported the idea of One Unit.⁵² Khan Abdul Ghaffar Khan from N.W.F.P. expressing his approval of the scheme in principle, emphasized eliciting public opinion before enforcing the scheme.⁵³ Pirzada Abdus Sattar, the Chief Minister of Sind, opposing the scheme, said that the proposal was rejected by an overwhelming majority of the Muslim League Parliamentary Party by a vote of 32 to 2.⁵⁴

After the dissolution of the first Constituent Assembly, a conference of central and provincial leaders was held in Karachi and on November 22, 1954, Prime Minister Mohammad Ali, announced the decision to introduce the One Unit scheme. One month later, the Provincial Assemblies of Punjab, Sind and N.W.F.P. voted in favour of the scheme.

⁵¹Ibid., Vol. I, No. 30, Sept. 21, 1955, p. 1033.

⁵²Ibid., Vol. XVI, No. 27, Sept. 15, 1954, pp. 357-363.

⁵³Ibid., p. 369.

⁵⁴Ibid., p. 372.

It was alleged that the support in Sind was secured by dismissing the Chief Minister Pirzada in November, 1954, and appointing Mr. Khurho in his place who succeeded in securing the approval of the members.⁵⁵

After securing the approval of the Provincial Assemblies, the central government was in a position to proceed. The Governor-General's attempt to constitute the new province of West Pakistan by an emergency ordinance was thwarted by the decision of the Federal Court in Usif Patel's case.⁵⁶ The One Unit bill was laid before the second Constituent Assembly where a heated debate took place. Mr. Fazlur Rahman, criticising the bill, said that it would lead to the division of the country into Bengalis and non-Bengalis.⁵⁷ On the other hand, it was considered by East Pakistan's leaders, as an attempt to diminish the power of Bengal. Mr. Abul Mansoor Ahmad, commenting on the bill, expressed that the essence of the bill was that West Pakistan would be "able to talk to the people of Bengal in one voice so that they may not use that position of numerical superiority."⁵⁸ After continued discussion, the second Constituent Assembly passed the

⁵⁵Feldman, op. cit., p. 84.

⁵⁶See Jennings, op. cit.

⁵⁷C. A. P. Debates, Vol. I, Aug. 24, 1955, p. 274.

⁵⁸Ibid., Vol. I, Sept. 30, 1955, p. 1423.

establishment of West Pakistan One Unit Act in 1955. However, the opponents of the scheme continued to criticise the Act, and succeeded, in 1957, in getting the bill passed in the West Pakistan Assembly which recommended the dissolution of the One Unit.

With the integration of the various units of West Pakistan into a single province, the federation of Pakistan was now left with only two provinces to balance with each other. With only two provinces in existence, which could be well represented in a single house, the adoption of a second chamber seemed unnecessary. So, the fourth and final draft passed by the second Constituent Assembly adopted a single chamber scheme based on the principle of parity. The National Assembly, as provided for in the new constitution, was to consist of 300 seats, equally divided between the two provinces of East and West Pakistan. Thus, the East-West controversy over the issue of representation was resolved by adopting the principle of equal representation of both wings.

IV The Problem of the Division of Powers

The third crucial issue in the process of constitution-making was the distribution of powers between the federal and provincial governments.

Federalism, according to Wheare, implies essentially a division of authority between general and regional governments, so that each of the governments in its own

sphere is co-ordinate with the other and neither is legally or politically subordinate to the other. To what extent the federal principle was incorporated in the constitution and how it worked is the subject matter of the next chapter. The present discussion is confined to the settlement of East-West differences on the nature of central provincial relations.

The problem of securing agreement on the division of powers is not peculiar to Pakistan and is bound to arise in any country which opts for a federal system. In the case of Pakistan, the issue had been significant in the course of constitution-making, because of the geographical and cultural differences between the people of the two wings. The questions of provincial autonomy and vesting of residual powers produced lengthy discussions in the Constituent Assembly of Pakistan and helped to delay the drafting of the first constitution for a period of nine years. One group (mostly West Pakistanis) favoured a strong central government with limited provincial autonomy, while a second group (mostly East Bengalis) demanded provincial autonomy and wanted to limit the powers of the centre to defense, foreign affairs and currency. The demand for provincial autonomy was made by the leaders of East Bengal, especially by the Awami League party and by non-Muslim minorities (especially Hindus, who formed one-fourth of the total population of the province). The demand gained further impetus from a new

political party, the United Front, which secured an overwhelming victory in the East Pakistan provincial elections in March 1954. The United Front included the demand in its 21 points manifesto. The demand for provincial autonomy was at odds with the demand for a strong national government, which was supported by the majority of members in the first Constituent Assembly. To reconcile these conflicting demands was a difficult task.

The demand for provincial autonomy was based on three factors. One was the general feeling among East Pakistanis that they had been ignored by the central government, and they were not getting a fair share of revenues and adequate representation in central administration.⁵⁹ Mr. Suhrawardy, from East Bengal, demanding adequate safeguards for East Pakistan said, "With a history of the past failures of this Government in developing East Pakistan . . . it became necessary to ensure through the constitution that East Pakistan was given its just rights and dues and was not left to the mercy of those charged with the apportionment of the resources of the country."⁶⁰ Secondly, they feared that the strong centre would encroach upon their powers. The working of federalism under the interim constitution gave rise to this fear. Mr. Suhrawardy, pointing out central

⁵⁹ See Section I of this chapter.

⁶⁰ C. A. P. Debates, Vol. I, No. 80, Feb. 29, 1956, p. 3649.

interference in the provincial matters in the past, wanted to restrict the power of the central government to assist-
ing and guiding the provinces. He said that "the Central Government has never failed to interfere and override provincial autonomy whenever they thought it necessary to do so in the interest of power politics and to maintain its political party in power."⁶¹ Thirdly, it was contended that, in view of the geographical separation, East Pakistan province could be better administered by the Legislature in Dacca rather than by the Central Legislature in Karachi.⁶²

The group advocating a strong centre argued that a strong centre was needed to maintain unity between the people of the two wings who were already divided by geography and ethnic differences. Mr. A. K. Brohi, the Central Law Minister, advocating a strong central government, said that if there had been geographical contiguity between East and West Pakistan, then the principles of decentralization of powers might have been the basis of Pakistan Constitution. But the geographical separation, the linguistic and cultural diversities required a strong central government to hold together all diverse elements

⁶¹Ibid., p. 3651.

⁶²Ibid., Vol. XVI, No. 27, Sept. 15, 1954, pp. 357-359.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

and to cope with natural difficulties.⁶³ A strong centre was considered necessary by the majority of members of the first Constituent Assembly to maintain national unity. The members held that a strong centre with the residual power was the only guarantee of a strong Pakistan.

The first report of the Basic Principles Committee, which granted more powers to the central government, was criticised by the group demanding decentralization. Mr. Nurul Amin, at the meetings of the subcommittee, proposed that residual powers should be assigned to the provinces. However, no major change was made in the second draft in the scheme of the division of powers. Mr. Nurul Amin from East Pakistan, Mr. M. Daultana from Punjab, and Khan Abdul Qayyum Khan from N. W. F. P. dissented from the recommendation as to the vesting of residual power in the centre.⁶⁴

After prolonged discussion the first Constituent Assembly arrived at a compromise relating to the distribution of powers which was largely modelled after the Government of India Act, 1935. The legislative powers were divided into three lists: federal, containing sixty-

⁶³See the speech of Mr. A. K. Brohi in Choudhary, Documents and Speeches on the Constitution of Pakistan, Dacca: Green Book House, 1967, p. 164.

⁶⁴Ibid., p. 102.

six items; provincial, containing forty-eight and concurrent with thirty-eight. The residual powers were vested in the Head of the State who, after consultation with the provincial governments, could direct any government - provincial or central - to exercise any of the powers not mentioned in any of these lists.⁶⁵ Mr. Abdul Hamid, from East Bengal, welcoming the provision, said that "all the residuary powers do not go to the Centre and there is the possibility that some powers may go to the Provinces as well."⁶⁶

The Report did not make any recommendations regarding the financial allocations between the centre and the provinces. It said that "a Supplementary Report on financial provisions and on such other matters as may be found to be outstanding will be submitted to the House when decisions on these matters will be reached."⁶⁷ Mr. Dutta, criticising the draft, said the provinces would not be able to carry on the day to day administration because they had practically no power of raising the revenue except for Court fees and the land revenue.⁶⁸ Mr. Brohi,

⁶⁵ B. P. C. Report (as adopted by the Constituent Assembly), Karachi: Government of Pakistan Press, 1954, pp. 73-79.

⁶⁶ C. A. P. Debates, Vol. XVI, No. 28, Sept. 16, 1954, p. 409.

⁶⁷ Ibid., Vol. XVI, No. 27, Sept. 15, 1954, p. 378.

⁶⁸ Ibid., p. 355.

the Central Law Minister, replying to Mr. Dutta's objection, contended that the question of financial allocations could be considered only after determining the extent of the Central and Provincial authority.⁶⁹

An analysis of the distribution of powers shows that the framers of the third draft were influenced by the need for a strong central government to maintain national unity. While the demand for provincial autonomy was too strong to be ignored, a strong central government to combat the danger of disintegration was considered essential. The same feelings and considerations prevailed in the second Constituent Assembly, which prepared the fourth and final draft that became the basis of the Constitution of 1956. The draft submitted to the second Constituent Assembly in January, 1956, provided for a strong centre. The federal control over the provinces was maintained by the grant of legislative, emergency, financial and administrative powers (discussed in the subsequent chapter) to the centre. A few important concessions were made to the demand for provincial autonomy. More powers were transferred to the provincial list. Railways, industries and cultivation, manufacture and sale of opium, which were central subjects under the third draft, were transferred to the provincial list.

⁶⁹Ibid., pp. 378-380.

Residual powers were given to the provinces, which, under the former draft, were vested in the Head of the State. These concessions indicate the extent of pressure exerted by the regionalist group.

Thus the controversial issues which were the product of different forces were resolved after hard bargaining, political manoeuvring and compromises. Undoubtedly, the East-West cleavage had been a major factor in the delay of constitution-making. However, certain other factors were also involved in the issues. Constitution-making was influenced by current politics, the fact that the Constituent Assembly and the Federal Legislature were one and the same body made the task complicated. Each group of politicians wanted to shape the future state in such a way as to suit its own local and provincial interests.⁷⁰ Political instability at the centre, dissolution of the first Constituent Assembly, dismissal of the Provincial Chief Ministers by the Centre, and imposition of Section 92A in the provinces greatly affected the process of decision-making on the contentious issues. Decisions on major constitutional issues were usually arrived at the Muslim League Parliamentary Party and presented to the Assembly. Debate in the Assembly was feeble because of the absence of a strong opposition party. More contentious issues

⁷⁰Callard, op. cit., p. 100.

which involved East-West conflict were decided at the meetings of central Ministers and provincial Chief Ministers. The following statement, made by Prime Minister Mohammad Ali, while presenting the "Mohammad Ali Formula", indicates the nature of the decision-making process:

The house will be pleased to learn that the formula has been unanimously accepted by my colleagues, by the Chief Ministers of East-Bengal, the Punjab, Sind, the N.W.F.P. and Bhawalpur, and by all members of the Muslim League Parliamentary Party. This unanimity⁷¹ of opinion is in itself a remarkable feature.

In this manner the issues were resolved, the final draft was discussed, amended and adopted by the second Constituent Assembly, which, after being approved and signed by the Governor-General Ghulam Mohammad, came into force on March 23, 1956.

Given this background the question arises - did federalism work as envisaged by the framers of the constitution? An attempt to answer this question is made in the next chapter.

⁷¹C. A. P. Debates, Vol. XV, No. 2, Oct. 7, 1953, p. 14.

CHAPTER V

FEDERALISM UNDER THE CONSTITUTION OF 1956

The basic feature of the constitution of 1956 was its federal character. The preamble to the constitution laid down that the territories "should form a Federation wherein the Provinces would be autonomous with such limitation on their powers and authority as might be prescribed." According to Article I of the constitution "Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan." The territorial integrity of the two provinces forming the federation was substantially guaranteed by the constitution. There was no provision in the constitution providing for the formation of new states and alteration of areas, boundaries or names of existing states by means of the Act of Parliament. The provinces of East and West Pakistan could not be annihilated for the purpose of making Pakistan a unitary state otherwise than by an amendment of the constitution, which had to be approved by the two Provincial Assemblies. Not only did changes in the provincial boundaries require the approval of the Provincial Assemblies, but the provisions concerning the distribution of legislative and exec-

utive powers and the amendment of the constitution could only be altered with the assent of the Provincial Assemblies.¹ Thus the federal principle was embodied in the constitution to an extent that the unilateral right of altering the provisions affecting the central-provincial relations was denied to any single government. However, the fact that the National Assembly had the power to amend Article 109, which vested the residual powers in the provinces, without the approval of the Provincial Assemblies showed that the federal principle was, to a certain extent, limited in the constitution.

The federal structure under the constitution of 1956 had a close resemblance to the Government of India Act, 1935. It was similar to the Government of India Act in the sense that it retained the same method of dividing powers. Under regional pressure for autonomy, the constitution granted certain powers to the provinces which they did not enjoy under the interim constitution. The extension of the provincial list, the parity clause,²

¹The Constitution of the Islamic Republic of Pakistan, Karachi: Government of Pakistan, 1956. See Art. 216.

²Ibid., Art. 31(1) Endeavour shall be made by the State to enable people from all parts of Pakistan to participate in the Defence Services of the country.
(2) Steps shall be taken to achieve parity in the representation of East Pakistan and West Pakistan in all other spheres of Federal administration.

and the grant of residual powers to the provinces were the major concessions to East Pakistan's demand for provincial autonomy. Apparently, the provincial powers were enhanced, but in reality the central government still retained its former legislative and executive control by which it might and frequently did intervene in provincial affairs.

I. Distribution of Legislative Powers

The problem usually faced by the makers of all federal constitutions is the desire, on the one hand, to provide a clear and precise distribution of functions and responsibilities in order to reduce the area of uncertainty, and on the other hand, the desire to introduce flexibility so as to permit changes to suit the needs of changing circumstances.³ In Pakistan, to avoid ambiguity, powers were specifically defined, while flexibility was to be achieved by the constitutional amendment and interpretation.

Following the Government of India Act, 1935, powers were exhaustively enumerated in three lists; federal, provincial and concurrent list. According to Article 105, Parliament was empowered to make laws, including laws having extra territorial operation, for the whole or any part of Pakistan; and a provincial legislature would make laws for the province or any part thereof.

³Watts, op. cit., p. 172.

Among the thirty subjects included in the federal list were foreign affairs, defense, currency, citizenship, foreign and inter-provincial trade and commerce, insurance and corporations, industries owned wholly or partially by the federal government, posts and telegraphs, mineral, oil and gas.

The concurrent list was the smallest and included only nineteen items, such as civil and criminal law, scientific and industrial research, price control, economic and social planning, inter-provincial migration and quarantine, trade unions and other matters of common interest. With regard to subjects in the concurrent list, paramountcy of the federal legislation was guaranteed by Article 110. However, if the provincial law, with respect to any of the matters in the concurrent list, had been reserved for the consideration of the president and had received his assent, then the provincial law would prevail. But the effect of this article lost its significance in view of the power granted to the parliament to amend or repeal the law so made by the provincial legislature.

The provincial list was the most comprehensive with ninety-four items. Mr. Chundrigar, the Central Law Minister, replying to the critics of the draft, said that the federation had become "more federal in character",⁴

⁴See the speech of Mr. Chundrigar in Choudhary, Documents and Speeches on the Constitution of Pakistan, Dacca: Green Book House, 1966, pp. 283-284.

implying that the provinces had acquired more autonomy in the management of their affairs. The list included, among others, public order, administration of justice, police, land, agriculture, local government, education, public health, sanitation, industries and corporations subject to the federal list, factories, regulations of mines and mineral development subject to the federal and concurrent lists, forests, electricity and other subjects of local interests.

One reason for the comprehensiveness of the provincial list was that, while nine federal tax sources were grouped as one item, twenty provincial taxes were listed separately.⁵ As pointed out by Watts, the large number of items on the exclusive provincial list, as compared with the exclusive federal list, was deceptive, for in fact the content of the lists was only slightly modified.⁶ Many of the federal subjects, as pointed out in the Constituent Assembly, were consolidated under a smaller number of entries, while the provincial subjects were split into a large number of items.⁷ Mr. Ata-ur-Rahman, criticizing the arrangement, said, "A number of subjects have been jumbled together to show the small number of

⁵See Fifth Schedule (Article 106) of the Constitution of 1956, op. cit.

⁶Watts, op. cit., p. 189.

⁷C. A. P. (Second) Debates, Vol. I, No. 57 and 58, January 26 and 27, 1956, pp. 2069, 2139-2141.

subjects."⁸

Although Railways were made a provincial subject, it was provided that, until Parliament, by law, made provisions for such transfer, Railways would remain under Federal Control and Parliament would have power to legislate on that matter.⁹ Criticising the provision in the Constituent Assembly, Mr. Deldar Ahmad said, " - - - whatever you had provided in the Provincial List you have taken it away by this clause."¹⁰ Moving an amendment (which was rejected) to provide a time limit of six months for such transfer he said that the central government should not be allowed to maintain railways under its control as long as it liked.¹¹ The members in the National Assembly raised questions as to the steps taken by the government in pursuance to Article 132 to transfer railways to the provincial governments. Replying to the question, Mian Jaffer Shah, the Central Minister for Communication, said that a committee had been formed to give effect to Article 132.¹² But no step was taken by the government

⁸Ibid., p. 2140.

⁹Article 132.

¹⁰C. A. P. Debates, Vol. I, No. 75, Feb. 25, 1956, p. 3313.

¹¹Ibid., pp. 3314-15.

¹²National Assembly of Pakistan Debates, Vol. I, No. 2, Feb. 11, 1957, p. 80, cited hereafter as N. A. P. Debates.

during the time of the constitution to transfer railways from the centre to the provinces, and so railways continued to be under central control at the time of the abrogation of the constitution. Similarly the constitution made the police function a provincial responsibility. In spite of this, a central police, which had been established in 1948, continued its operations. Although provincial governments impressed the need for the transfer of those subjects provided in the provincial list to the provinces, and assurances were given by the centre for such transfer,¹³ no steps were taken to implement the constitutional provisions.

The location of residual powers is an important aspect of the distribution of authority. However, the significance of the residual legislative powers varies according to the detail and comprehensiveness of the lists, setting out the location of functions and responsibilities. Residual powers would be less significant if legislative powers are set out with such thoroughness as to leave only those matters (as residual), unforeseen by the framers of the constitution.¹⁴ Although, under regional pressure, the residual powers were vested in the provinces,¹⁵ the powers were enumerated so exhaustively

¹³Dawn, (Karachi), Jan. 25, 1957, p. 1.

¹⁴Watts, op. cit., p. 174.

¹⁵See Art. 109.

in the three lists that hardly any subject remained which could conceivably constitute a significant addition to the contents of the residuary field.¹⁶ Besides this, the provision concerning the residuary powers could be amended without the previous consent of the provincial assemblies. The National Assembly could amend the same by two-thirds majority of the members.

II Emergency Powers

The constitution empowered the federal legislature to make laws for the provinces on provincial subjects under three cases. Firstly, under Article 107, the federal legislature could legislate if the provincial legislature, by passing a resolution, had authorized the parliament to make laws in any matter enumerated in the provincial list or any matter not enumerated in any of the three lists. However, an act passed by the parliament in exercise of this power could be amended or repealed by the provincial legislature. The second was Article 108, which empowered the federal government to make laws for implementing any treaty, agreement or convention or a decision taken by an international body, even though it might deal with a matter enumerated in the provincial list or a matter not enumerated in any of the three lists. Although it was provided that no law under this article should be enacted without consulting

¹⁶A. K. Brohi, Fundamental Law of Pakistan, Lahore: Malik Din Mohammad, 1958, pp. 60-61.

the governor of the province to which such law was to apply. However, the governor was an agent of the president for all practical purposes. The provision was criticised in the Constituent Assembly that legislation under this provision might be made without the knowledge and consent of the provincial government. Therefore, it was proposed to consult the provincial government which included both the cabinet and the governor. But the motion was rejected by the House.¹⁷ Thirdly, on the proclamation of emergency, under Section 191, the parliament was authorized to make laws for a province with respect to any matters not enumerated in the federal or concurrent lists. The Section empowered the president to give directions to a province as to the manner in which the executive authority of the province was to be exercised. He could assume himself or direct the governor to assume on his behalf the powers of the provincial government except the provincial legislature or judiciary. Thus, under Section 191, if the president decided to declare an emergency, which he was authorized to do without the consent of the parliament, if he was satisfied that 'the security or economic life of Pakistan' was threatened, any semblance of provincial independence would disappear. The province then could be virtually governed by the president or the

¹⁷ C. A. P. (Second) Debates, Vol. I, No. 67, Feb. 8, 1956, pp. 2669-2673.

governor on his behalf.

The power granted to the central government under this Section was severely criticized in the Constituent Assembly. The critics wanted to define emergency in order to prevent the misuse of the Section. Mr. Mahmood Ali stated that

Proclamation after proclamation had been made in Pakistan without sufficient cause for the same; we understand threat of war, we understand external aggression, but we do not understand what is meant by internal disturbance. A movement against a particular measure of the government for the time being may be interpreted as internal disturbance.¹⁸

The Constitution did not lay down a definite time limit for the end of emergency. Sub-clause 6 of Article 191 provided that a "proclamation of emergency shall be placed before the National Assembly as soon as conditions make it practicable for the president to summon the Assembly." Thus the democratic process, not only in the provinces, but even at the centre could be suspended for an indefinite period. The president might take advantage of the phrase "as soon as it is practicable" and might not summon the Assembly and rule the country for an indefinite period without the help of the National Assembly. Such apprehensions were expressed in the Constituent Assembly by a group of members and amendments were proposed to that effect which were not accepted by the majority. However, during the brief period of the

¹⁸Ibid., Vol. I, No. 74, Feb. 17, 1956, p. 3255.

operation of the constitution no such situation arose which necessitated the use of Section 191.

Although Section 191 was not used, the central government intervened in provincial matters by means of Section 193. The section empowered the president to proclaim a state of emergency in the province if, on receipt of a report from the governor, he was satisfied that "the government of the province cannot be carried on in accordance with the provisions of the Constitution." The president in such case could "assume to himself or direct the governor of the provinces to assume on behalf of the president, all or any of the functions of the Government of the Province." The section further laid down that the president might "declare that the powers of the Provincial Legislature shall be exercisable by, or under the authority of, Parliament." In turn, parliament might then confer on the president the power of the provincial legislature to make laws. Although this section empowered the centre to assume the powers of the provincial government, the provincial government could not be suspended for an indefinite period. A proclamation under Article 193 would cease to operate after two months unless it was extended by the National Assembly for a total period of six months.

This Section, when debated, was subject to severe criticism by the provincialists. Mr. Mahmood Ali, from East Pakistan, said,

We have a bitter experience of Section 92A in Pakistan in the different provinces of Pakistan. During the last eight years of independence we have seen how this provision has been misused most undemocratically and for political ends.¹⁹

It was further stated that

a misuse may arise when the province and the central government will not be governed by the same political party. If the central government is of the opinion that the political party which is running government in the province is to be suppressed not in the interest of good government; . . . but purely for political motives, it may bring about an influence to bear upon the president to suspend the democratic process in the province.²⁰

Mr. Abul Mansoor Ahmad from East Bengal, criticizing the emergency provisions, said, "it is not a federal constitution . . . The emergency provisions have taken away all the powers that were ostensibly given to the provinces."²¹

The fears expressed by the members were not groundless. Power granted to the centre under Section 193 was not only exercised in practice, but also misused by the central government. President's rule was imposed on the provinces on several occasions. Section 193 was imposed on East Bengal in May, 1956. A ruling of the Speaker of the Provincial Assembly prevented the Sarkar ministry from presenting its budget before the provincial

¹⁹Ibid., Vol. I, No. 68, Feb. 9, 1956, p. 2797.

²⁰Ibid., p. 2795.

²¹Ibid., Vol. I, No. 52, Jan. 17, 1956, p. 1855.

legislature, which created a constitutional crisis. As a result, President Mirza suspended the constitution of East Pakistan and took over the reins of the Provincial Government. Within less than a week, parliamentary government was restored and Sarkar Cabinet was reinstated. This action gave rise to criticism in certain sections of the population that the normal course of inviting the opposition party (Awami-League) to form the Ministry was not followed. President's rule under Section 193 was again proclaimed in September 1958 in East Pakistan, when no stable ministry could be formed after the fall of the Awami-League (A. R. Khan's ministry) and the United Front (Sarkar ministry) within less than a week.

Similarly, emergency provisions of Section 193 were imposed in West Pakistan in March, 1957. Many Republicans in the provincial legislature had deserted the party on the issue of One Unit, thus creating a precarious situation for Dr. Khan's cabinet. President Mirza, who patronized the Republican party, took this action to save the party from being defeated in the legislature on its budget. Instead of observing the parliamentary tradition of inviting the opposition Muslim League to form the cabinet, the parliamentary government in the province was suspended. The leader of the Muslim League party, Sardar Bahadur Khan, described it as

"cutting at the very roots of democracy".²² Mr. Fazlur Rahman, a prominent member of the National Assembly, called it a "negation of democracy and a fraud on the constitution".²³ Mr. Ahmad Jafer, criticising the action of the central government, said, "It is most regrettable that the provincial autonomy should have been deemed to this end within a year of the rule of those who championed its cause and proclaimed its place in their 21 points which they called so dear to themselves."²⁴

Criticising the central effort to keep the Republicans in power in the Province, Dawn commented in its editorial:

If the theory is accepted that the Central Ministry must necessarily be formed by parties which are in power in the provinces, or vice versa, the working of the Constitution, which provides for a central government and two autonomous provincial governments, will often become impossible. The Centre will then always be prompted to protect itself by using or misusing its power to keep only conformist governments in office in both the provinces, and . . . to keep out of office the non-conformist group by using rough and ready methods, or by resorting to intrigue and seduction or by even applying Section 193 of the Constitution.²⁵

²²Dawn, (Karachi), March 22, 1957, p. 1.

²³Dawn, (Karachi), March 26, 1957, p. 1.

²⁴Ibid.

²⁵Dawn, (Karachi), January 1, 1957, p. 5.

An attempt to dissolve the provincial legislature for political purposes was thwarted by the decision of the Supreme Court. Dr. Khan, anticipating the defeat of his government in the provincial legislature, advised the Governor to dissolve the legislature. Governor Gurmani referred the matter to the President, who asked the opinion of the Supreme Court whether a provincial governor was empowered under Article 83 or any other provision to dissolve the Assembly of his province functioning under Article 225 of the constitution. The court held that no dissolution of the Assembly was possible until general elections had been held.²⁶

Another provision that enabled the centre to control provincial governments was Section 194. Under the Section, the president, in case of any threat to the financial stability or credit of Pakistan, could proclaim a financial emergency, after consultation with the governor of the province or provinces concerned. During the period of the financial emergency, the federal government could direct a province to observe such procedures as might be required for restoring financial stability and credit.

Proclamation of Emergency under Articles 191, 193 and 194 could not be challenged in a court of law. The validity of the proclamation could only be challenged on

²⁶Dawn, (Karachi), August 5, 1957, p. 1.

the ground of the malafide exercise of power, which was difficult to prove. The president was the sole judge of the situation and it was he who had to decide whether or not the proclamation would be issued. During the period of either political or financial crisis the federal character of the constitution could be suspended and the country could be governed virtually as a unitary state.

III Financial Relations Between the Centre and the Province

The financial provisions in the constitution were, to a great extent, similar to those of the adopted constitution of 1935, except that estate and succession duties on agricultural land and stamp duties were returned to the provinces. All major sources of income were assigned to the centre. The centre was given the power to levy custom duties, export duties, excise duties, corporation taxes and taxes on income other than agricultural income, estate and succession duties in respect of property other than agricultural land, taxes on sales and purchases, terminal taxes on goods or passengers, and taxes on mineral oil and natural gas.

The provinces had few revenue resources. The principal sources of income for the provinces were taxes on agricultural income and the capital value of agricultural land, estate and succession duties on agricultural land, property taxes, stamp duty, excise on alcohol and drugs, electricity tax, taxes on vehicles, advertisements,

TABLE 4

BUDGETARY POSITION OF THE CENTRAL GOVERNMENT¹

| REVENUE | | (Rupees in Millions) | | |
|------------------------------|---------|----------------------|---------|--|
| Principal Heads of Revenue | 1955-56 | 1956-57 | 1957-58 | |
| Customs | 509.0 | 470.8 | 420.9 | |
| Central Excise Duties | 125.8 | 144.9 | 171.3 | |
| Income Tax & Corporation Tax | 197.7 | 207.8 | 230.0 | |
| Sales Tax | 96.3 | 117.8 | 130.3 | |
| Salt | 23.7 | 22.6 | 23.4 | |
| Other Heads | 44.9 | 43.0 | 45.1 | |
| Total Principal Heads | 997.4 | 1,006.9 | 1,021.0 | |
| Railways (net) | 76.9 | 76.8 | 96.0 | |
| Posts & Telegraphs (net) | 15.2 | 14.5 | 19.4 | |
| Debt Services | 87.0 | 88.5 | 129.7 | |
| Civil Administration | 22.3 | 25.2 | 26.7 | |
| Currency & Mint | 19.6 | 27.1 | 36.0 | |
| Miscellaneous | 20.6 | 17.7 | 23.8 | |
| Defence Services | 55.3 | 37.1 | 39.5 | |
| Extraordinary Items | 1.1 | 1.1 | 71.2 | |
| Other Heads | 3.8 | 3.4 | 4.4 | |
| Total Revenue Receipts | 1,299.2 | 1,298.3 | 1,467.7 | |

| Expenditure met from Revenue | 1955 - 56 | 1956 - 57 | 1957 - 58 |
|--|-----------|-----------|-----------|
| Direct Demand on Revenue | 29.0 | 28.2 | 34.0 |
| Debt Services | 90.7 | 121.3 | 113.9 |
| Civil Administration | 277.2 | 250.8 | 334.2 |
| General Administration | 52.6 | 54.9 | 88.6 |
| Frontier Regions | 66.2 | 52.5 | 60.0 |
| Foreign Affairs | 24.9 | 30.7 | 32.6 |
| Education | 20.2 | 18.6 | 24.0 |
| Medical & Public Health | 9.8 | 9.7 | 15.5 |
| Other Beneficent & Social | | | |
| Service Departments | 46.8 | 35.9 | 63.0 |
| Other Departments | 56.7 | 48.5 | 50.5 |
| Currency & Mint | 3.8 | 5.8 | 5.8 |
| Civil Works | 21.7 | 24.6 | 17.4 |
| Miscellaneous | 50.0 | 43.4 | 52.6 |
| Pensions, Stationery & Printing | 15.0 | 10.5 | 13.0 |
| Contribution to the Special Fund for Rehabilitation | 22.8 | 18.2 | 17.4 |
| Other Miscellaneous Expenditure | 12.2 | 14.7 | 22.2 |
| Defence Services | 769.4 | 737.9 | 793.5 |
| Contribution & Miscellaneous Adjustment between the Central and Provincial Governments | 32.2 | 41.5 | 30.7 |
| Other Heads | 23.1 | 40.6 | 91.5 |
| Total - Expenditure met from Revenue | 1,297.1 | 1,294.1 | 1,473.6 |
| Surplus | 2.1 | 4.2 | 5.9 |

1. Figures taken from Pakistan, 1957-1958, Karachi:
Pakistan Publications, 1958, pp. 33-5.

TABLE 5

BUDGETARY POSITION OF THE PROVINCIAL GOVERNMENTS¹

| Financial Year | East Pakistan | | West Pakistan | | | |
|----------------|---------------|---------------------------------|---------------|---------------------------------|---------|------|
| | Revenue | Expenditure Surplus/Deficit (-) | Revenue | Expenditure Surplus/Deficit (-) | | |
| 1955 - 56 | 246.0 | 289.0 | -43.0 | 460.2 | 455.3 | 4.9 |
| 1956 - 57 | 255.1 | 334.7 | -79.6 | 608.8 | 561.4 | 47.4 |
| 1957 - 58 | 348.7 | 406.5 | -57.8 | 628.6 | 601.7 | 26.9 |
| Total | 849.8 | 1,030.2 | -180.4 | 1,697.6 | 1,618.4 | 79.2 |

1. Figures taken from Pakistan 1957 - 1958, Karachi: Pakistan Publications, 1958, p. 36.

TABLE 6
ALLOCATION TO THE PROVINCIAL GOVERNMENTS FROM
CENTRAL REVENUES¹

| (Rupees in Millions) | | | | | | | | | | | | | | |
|----------------------|----------------|-------------------|--------------|---------------|-------------------|--------------|---------------|-------|----------------|-------------------|--------------|---------------|-------|-------|
| Financial
Year | East Pakistan | | | | West Pakistan | | | | Total | | | | | |
| | Jute
Duties | Central
Excise | Sales
Tax | Income
Tax | Central
Excise | Sales
Tax | Income
Tax | Total | Jute
Duties | Central
Excise | Sales
Tax | Income
Tax | Total | |
| 1955-56 | 58.1 | 14.6 | 20.2 | 19.9 | 112.8 | 18.1 | 73.9 | 23.1 | 115.1 | 58.1 | 32.7 | 94.1 | 43.0 | 227.9 |
| 1956-57 | 45.1 | 17.5 | 25.2 | 19.7 | 107.5 | 20.4 | 100.9 | 22.8 | 144.1 | 45.1 | 37.9 | 126.1 | 42.5 | 251.6 |
| 1957-58 | 47.0 | 18.8 | 25.1 | 22.2 | 113.1 | 21.9 | 94.6 | 25.8 | 142.3 | 47.0 | 40.7 | 119.7 | 48.0 | 255.4 |
| Total | 150.2 | 50.9 | 70.5 | 61.8 | 333.4 | 60.4 | 269.4 | 71.7 | 401.5 | 130.2 | 111.3 | 339.9 | 133.5 | 733.9 |

1. Figures taken from Pakistan 1957 - 1958, Karachi: Pakistan
Publications, 1958, p. 37.

TABLE 7
DEVELOPMENT LOANS MADE AVAILABLE TO THE
PROVINCIAL GOVERNMENTS FROM YEAR TO YEAR¹

| Financial
Year | East Pakistan | | West Pakistan | | Total | |
|-------------------|----------------------|-----------------|----------------------|-----------------|----------------------|-----------------|
| | Amount
sanctioned | Amount
drawn | Amount
sanctioned | Amount
drawn | Amount
sanctioned | Amount
drawn |
| 1955-56 | 124.9 | 91.3 | 198.7 | 191.2 | 323.6 | 262.5 |
| 1956-57 | 206.1 | 79.1 | 209.8 | 133.8 | 415.9 | 212.9 |
| 1957-58 | 274.1 | 208.1 | 270.9 | 252.6 | 545.0 | 460.7 |
| Total | 605.1 | 358.5 | 679.4 | 577.6 | 1284.5 | 936.1 |

1. Figures taken from Pakistan 1957 - 1958, Karachi: Pakistan Publications, 1958, p. 38.

animals, boats, professions and trades, luxuries, capit-
ation taxes, tolls, terminal taxes and taxes on goods and pas-
sengers carried by road or inland waterways.

The other sources of provincial revenue were grants from the central government and shared taxes. The provinces shared with the centre revenues from income tax, sales tax, export duty and excise duties. One half of the proceeds of the income tax was divided among East and West Pakistan in the ratio of 45:55. East Pakistan retained half the net proceeds of the sales tax collected in its area. The grants-in-aid were given annually at the discretion of the central government, and could not be claimed as a right by the provinces. In matters of borrowing also the provinces depended upon the good will of the federal government.²⁷

The limited financial resources of the provinces made them dependent upon central loans. The amount they received from the centre was insufficient to meet their expenses. Provincial expenses were greater than those of the centre if one excludes defence spending.²⁸ Since provincial revenues were adequate for them to meet their commitments, they had to borrow heavily from the centre. Table 7 indicates a steady increase in the amount of money borrowed

²⁷Article 116.

²⁸An examination of Tables 4 and 5 shows that federal expenditures (less defense services and contributions to provinces) for 1955-1958 was Rs. 1588.8 million, whereas provincial expenditure for the same period was Rs. 2648.6 million.

by the provinces. Tables 6 and 7 illustrate that the amount allocated to the provinces from central revenues was less than the amount borrowed by the provinces from the centre. In three years (i.e., 1955-1958) the provinces received Rs. 733.9 million from the central government and borrowed Rs. 936.1 million for the same period. The smaller financial allocation to the provinces appears to be the result of the huge defense expenditures. Defense expenditures consumed 60 per cent of the total central revenues as is shown by Table 4. The fear and apprehension of external threat continued to exert pressure during the period 1956-1958, which compelled the centre to assign a major portion of its revenue to defense expenses.

Wheare suggests that grants should not depend upon the good will of the granting government. If the recipients are dependent then, the federal principle is thereby modified. He considers a permanent group representing both general and regional governments as more suitable for recommending the amounts of grants.²⁹ According to Article 114, parliament was empowered to make grants-in-aid to the provinces in need of assistance. The Constitution provided for a body called the National Finance Commission, to make recommendations to the president regarding the grants-in-aid to the provinces and the sharing of taxes.³⁰

²⁹ Wheare, op. cit., pp. 118-119.

³⁰ Article 118.

The recommendations of the Commission were to be implemented by the President. The Commission was to be formed by the President every five years. It was to consist of the central and provincial finance minister and such other persons as would be appointed by the president after consultation with the governors of the provinces. Despite criticisms by the members in the National Assembly,³¹ for the delay in constituting the Commission, it was not appointed prior to the abrogation of the constitution.

IV Central Interference in Political Sphere

Another instrument of central control was the provincial governor. He was to be appointed by the president and was to hold office during the pleasure of the President. Theoretically speaking, the governor had no real powers. In the exercise of his functions, he was to act in accordance with the advice of the cabinet. Although he enjoyed the power of choosing the chief minister, he was bound to appoint one who, in his opinion, was likely to command a majority.³² Similarly, he could dismiss the chief minister, not at his own discretion, but only on the failure of the chief minister to command the majority in the provincial legislature.

Despite the limiting provisions in the constitution,

³¹N. A. P. Debates, Vol. II, No. 11, April 20, 1957, pp. 779-780.

³²See Article 71 (3), (7).

a governor, in practice, was an important figure in the provincial politics. The first two governors to hold office under the constitution were Mr. M. A. Gurmani in West Pakistan and Mr. A. K. Fazlul-Huq in East Pakistan. Both governors actively participated in the provincial politics and could not be called impartial nominal heads of the provinces. Mr. Gurmani had been a member of the central cabinet for a long time and actively took part in the One Unit campaign of West Pakistan. He played a prominent role in the formation of the Republican party during his governorship. As revealed later by the Secretary-General of the Republican party, Mir Abdul Qayyum, the party was formed in Government House, Karachi, and Government House, Lahore.³³ Mr. Fazlul-Huq had been a chief minister of East Bengal and, even while governor, he continued to be the nominal head of Krishak Saramik party.

Being appointed by the president and holding office during his pleasure, governors were liable to be influenced by the federal government particularly since they were partisan. Cases of such central pressure and interference in provincial politics were numerous under the interim constitution. This practice continued later. Practically speaking, the governor, in order to continue in office, had to act according to the wishes of the cen-

³³Dawn, (Karachi), March 16, 1957.

tral government. The Central Government dismissed the East Pakistan Provincial Governor, Mr. Fazlul-Huq in 1958, because he did not prorogue the provincial legislature to save the Awami League cabinet from defeat whom the Central Coalition ministry dominated by the Awami League, wanted to keep in power in the Province. Failing to get the budget passed, the Awami-League ministry advised the Governor to prorogue the legislature. The Governor refused on the ground that the ministry had lost the confidence of the legislature therefore he was not bound to act on the advice of the ministry. He dismissed the Awami-League ministry and invited Mr. Abu Hussain Sarkar (United Front) to form a new cabinet. The Centre reacted by removing the Governor, Fazlul-Huq, and appointing Mr. Hamid Ali in his place. The new Governor dismissed the Sarkar ministry and called upon the Awami-League to form a cabinet. The dismissal of the Sarkar ministry by the new Governor was challenged in the Dacca High Court and the Court held that the governor could dismiss a Chief Minister as soon as he was satisfied that the Chief Minister did not enjoy the confidence of the legislature. However, Central intervention could not save the Awami-League ministry from a defeat in the Provincial legislature. This whole episode shows how provincial politics was subject to central interference.

Similarly, West Pakistan politics, too, were not

free from central pressure. Governor Gurmani was forced to resign because his activities were considered to be contrary to the interest of the Republican party, which was patronized by President Mirza.³⁴

The central government intervened in the provincial matters, not only through the use and misuse of constitutional provisions, but by other ways and means to exert pressure on provincial politics. After bringing its own man and party in to power in the provincial government, it used every means to keep them in power. Dr. Khan, the chosen man of President Mirza, was nominated as the Chief Minister of West Pakistan province before that Province came into being by the One Unit Act of 1955. Dr. Khan did not belong to any political party. The Muslim League Parliamentary party, which claimed a majority of 245 members in a House of 306, refused to support him and asked the Governor to invite its leader, Sardar Bahadur Khan, to form a cabinet. The Governor's action in not allowing the leader of the majority party to form the cabinet was regarded as violating the letter and spirit of the constitution of Pakistan.³⁵ To keep himself in power, Dr. Khan, with the help of President Mirza, formed a new party out

³⁴London Times, September 4, 1957, p. 9.

³⁵Resolution of the All-Pakistan Muslim League Working Committee quoted in Choudhary, Democracy in Pakistan, Dacca: Green Book House, 1963, p. 121.

of the dissident Muslim League members. As has been explained earlier, resort to Section 193 in March, 1957, was an attempt by the Centre to keep Dr. Khan in power.

V Administrative Relations

In administrative fields, the central control over the provinces was more visible. The federal government was responsible for protecting each province against "internal disturbance", and to ensure "that the government of every province is carried on in accordance with the provisions of the constitution."³⁶ Thus, on the plea of 'internal disturbance', the central government could interfere in the provincial matters. Criticising the provision in the Constituent Assembly, Mr. Deldar Ahmad said that, "Even during these few years . . . this has also been proved sufficiently that even in normal time, without any emergency at any time, the Central Government, if it so desires, can interfere with the internal administration of the Province."³⁷ Further, the government of a province was to ensure compliance with all Acts of Parliament and was to use its authority so "as not to impede or prejudice the exercise of the executive authority of the federation". For the purpose of obtaining compliance with these provisions the federal

³⁶Article 125.

³⁷C. A. P. (Second) Debates, Vol. I, No. 67, February 8, 1956, p. 2710.

government could issue directions to the provincial government. The centre could control provincial action by issuing directions as to the manner in which the executive authority of the province was to be exercised "for the purpose of preventing any grave menace to the peace or tranquility or economic life of Pakistan or any part thereof".³⁸ Thus Articles 125 and 126 gave sweeping powers to the centre to interfere in the provincial affairs.

Another source of central interference in the provincial administration was the Civil Service. There were two central civil services: a civil service of the Federation and "All-Pakistan Services" both controlled by the president. In addition, each province had its own civil service. The "All-Pakistan Service" was the single higher service 'common to the Federation and the Provinces'.³⁹ Parliament had the exclusive power to make laws with respect to the "All-Pakistan Services".⁴⁰ The members of the All-Pakistan Services were appointed by the president and they held office during his pleasure.⁴¹ They could be transferred from one province to the other by the president after consultation with the governor of the province.

³⁸Article 126.

³⁹Article 183(1).

⁴⁰Article 181(2).

⁴¹Articles 180 and 182.

The provincial government had a limited control over the C. S. P. officers; they could be promoted and transferred within the province by the governor but could only be removed by the president. The provincial government could not take disciplinary action against them. The constitution guaranteed that a member of the All-Pakistan Service could not be removed "by an authority subordinate to that by which he was appointed".

The provision, when debated in the Constituent Assembly, was criticised by the members demanding provincial autonomy. An Amendment was moved that the C. S. P. officers should be posted in the provinces with the consent of the provincial government and should be recalled by the federal government if the provincial government so desired.⁴² Supporting the motion Sheikh Mujibur Rehman said that in view of the past experience of how the C. S. P. officers refused to carry out the orders of the provincial ministers, provincial governments should be given the power to control them. He said:

Officers who were under the direct control of the Central Government but working in that Province refused to carry out or obey the orders of Ministers or the Provincial Cabinet or the Provincial Legislature because they believed that the Provincial Government had no power to take any action against them if they violated the orders of the Ministers or the Ministry.⁴³

⁴²C. A. P. (Second) Debates, Vol. I, No. 68, Feb. 9, 1956, p. 2776.

⁴³Ibid., p. 2776-2778.

Mr. Zaheeruddin from East Pakistan said that the framers by providing for an All-Pakistan Services were giving a unitary constitution using the label of federation. Quoting instances from the past he said that the officers appointed by the central government not only acted against the interests of the province but they acted as spies of the central government because the provincial government had no power to take action against them. Therefore, he argued that,

. . . if these officers are allowed to have a free hand in the provinces, the result will be that the working of the provisions will become impossible. If we were spied upon, it will not be possible to act freely. And if this clear-cut division of officers is not made between the officers of the different units and the officers of the Centre, it will be difficult to run the Federation.⁴⁴

However the motion for giving disciplinary power to the provincial government was defeated in the House which indicates the domination of the centralist group.

The existence of an All-Pakistan Service was a violation of the federal principle because it made the provincial administration subject to central interference. The principal civil servants at the provincial capitals and those in charge of the division and districts were predominantly members of the Civil Service of Pakistan. The Chief Secretary (a C. S. P. officer)

⁴⁴Ibid., Vol. I, No. 75, Feb. 20, 1956, pp. 3290-3293.

was the head of the Provincial Secretariat and responsible for general administration and proper functioning of the Secretariat. Each provincial department was under the direction of a provincial minister. But the minister depended largely on the members of his department. With a few exceptions, every provincial department was headed at the secretary level by an officer of the Civil Service of Pakistan. Twelve out of fifteen departments in West Pakistan were administered by C. S. P. officers on January 1, 1957.⁴⁵ In such a situation provincial civil servants had little chance of promotion to higher posts. Pointing out the grievances of the provincial civil service, DAWN noted in its editorial, "the number and nature of higher posts available to senior P. S. C. officers is unduly decreasing," therefore, "it is necessary to maintain a due balance between the central and the provincial cadres."⁴⁶

Since the provincial government had no power to dismiss the C. S. P. officers, they did not feel obligated to carry out the orders of the provincial government. Complaints were often made in the Constituent Assembly that the C. S. P. defied the orders of provin-

⁴⁵H. F. Goodnow, The Civil Service of Pakistan, New Haven: Yale University Press, 1964, p. 123.

⁴⁶DAWN, (Karachi), February 21, 1957, p. 5.

cial ministers.⁴⁷ The C. S. P. officer in the province was conscious that he would be supported by the central government if he stood firm on certain principles, even to the extent of defying his minister.⁴⁸ Describing the dominance of the C. S. P. officers in the provincial administration, K. B. Sayeed remarked that the federal principle was almost completely set at nought by the centralizing role of the Civil Service of Pakistan.⁴⁹

VI Federation Under Regional Pressure

While a highly centralized government was at work, demand for regional autonomy was getting stronger in East Pakistan. This demand was an outcome of certain grievances. East Pakistanis felt that they were being discriminated against in matters of finance, administration and defence services.⁵⁰ Efforts were made by the centre to remove their grievances. Particularly after the defeat of the Muslim League in East Pakistan's provincial election, attempts were made to bring the expenditures of the two provinces into line. The

⁴⁷ See C. A. P. (Second) Debates, Vol. I, No. 68 and No. 75, February 9 and 20, 1956. Particularly pp. 2776-2781 and 3290-3295.

⁴⁸ K. B. Sayeed, "The Political Role of Pakistan's Civil Service," Pacific Affairs, June, 1958, p. 140.

⁴⁹ Ibid.

⁵⁰ Refer to Chapter IV.

Suhrawardy and Noon governments at the centre followed the parity formula in matters of foreign exchange and trade. Disproportionate representation in administration and defense services was considerably reduced. In accordance with the principle of parity, 80 per cent of the vacancies in the Civil Service of Pakistan were filled on a parity basis between the two provinces, and 20 per cent on merit basis. Similarly, efforts were made to increase the proportion of Bengalis in the armed forces. Prime Minister Feroz Khan Noon announced in the National Assembly that despite physical differences between the people of the two wings, special instructions had been issued to recruit as many persons from East Pakistan as possible.⁵¹ There was an increase in the development loans⁵² to East Pakistan since 1955. Similarly grants-in-aid to East Pakistan were increased from Rs. 4.6 million in 1956-1957 to 11.1 million in 1958-1959.

Despite these efforts economic disparity between the two provinces remained because of the greater population and inadequate revenue resources of East Pakistan. While the total revenue receipt of West Pakistan in 1956-1958 was Rs. 1223.8 million, East Pakistan's total revenue

⁵¹N. A. P. Debates, Vol. V, No. 1, December 28, 1957, pp. 2-3.

⁵²See Tables 3 and 7.

for the same period was 617.9 million rupees.⁵³ In view of its inadequate revenues, East Pakistan should have received more help and grants from the centre, but unfortunately it did not get its due share. Mr. Ata-ur-Rahman, Chief Minister of East Pakistan, accusing the central government of preferential treatment of West Pakistan to the detriment of East Pakistan, said that up to 1958-1959 East Pakistan received Rs. 26.52 crores in grants, while West Pakistan obtained Rs. 52.58 crores.⁵⁴ Similar disparity to the disadvantage of East Pakistan can be noticed when one looks at the expenditures of the central government. As it appears in Tables 1 and 4, over sixty per cent of expenditures of the central government was on defense. An analysis of the defense expenditure would show that whereas Rs. 18 crores had been spent up to 1956-1957 in East Pakistan, about Rs. 480 crores had been spent in West Pakistan.⁵⁵ This imbalance was due to the fact that the armed forces were located predominantly in West Pakistan. In respect to loans also the Province was not fairly treated. Up to 1957-1958, while West Pakistan got Rs. 94.23 crores on development, East

⁵³Quoted in K. B. Sayeed, The Political System of Pakistan, Boston: Houghton Mifflin Company, 1967, p. 112.

⁵⁴Dawn, (Karachi), June 5, 1958, p. 1.

⁵⁵Ibid.

Pakistan got Rs. 45.77 crores.⁵⁶ Similarly disparity remained in civil and defence services. Despite the parity formula being pursued, West Pakistanis outnumbered East Pakistanis in civil and defence services. Prime Minister Feroz Khan Noon replying to the criticism with regard to the poor representation of East Pakistanis in the Civil Service of Pakistan conceded that twenty per cent merit quota was working against East Pakistan and more West Pakistanis were recruited into the Civil Service of Pakistan through the merit quota.⁵⁷

Economic disparity created a sense of dissatisfaction and resentment in East Pakistan which was ultimately reflected in the demand for regional autonomy. Demanding regional autonomy, Bhashani, Awami-League leader, went so far as to declare that "a stage might come in the future if the grievances of East Pakistan are not redressed, when the people of East Pakistan might feel inclined to say 'Assalam Alaikum' (farewell)." ⁵⁸ This statement aroused strong public reaction in both wings. Prime Minister Suhrawardy, whose party had been vocal in putting forward the demand, replied to the regionalist that "demand for regional autonomy

⁵⁶ Ibid.

⁵⁷ N. A. P. Debates, Vol. II, No. 10, March 4, 1958, pp. 787-88, 1818-1819.

⁵⁸ DAWN, (Karachi), February 8, 1957, p. 8.

was not based on facts since 98 per cent of it had been allowed in the constitution."⁵⁹ These two contradictory statements by the leaders of the same party reflect their difference of opinion over regional autonomy which later resulted in the split of the Awami League. Regional autonomy for East Pakistan was one of the two major issues - the other was foreign policy - on which Bhashani broke away from the Awami League.⁶⁰ After leaving the Awami League, Bhashani created a new party, National Awami Party (NAP). Mr. Abdul Latif Biswas, a Member of Parliament from East Pakistan, said, "no one in East Pakistan ever thinks of dividing up Pakistan. We are Pakistanis first and last. Only our enemies can think of destroying our unity and we shall never allow their designs to succeed."⁶¹ President Mirza warned the regionalists that the "Government would not hesitate to use extreme measures to put down all overt and veiled efforts to subvert the unity and integrity of Pakistan."⁶²

Similar public and official reaction checking the extremist regional forces, concentrated mainly in the Awami League, could be noticed when the East Pakistan

⁵⁹ Ibid.

⁶⁰ M. Ahmad, Government and Politics in Pakistan, Karachi: Pakistan Publishing House, 1963, p. 160.

⁶¹ DAWN, (Karachi), February 9, 1957, p. 7.

⁶² DAWN, (Karachi), March 5, 1957, p. 1.

Provincial Assembly in April, 1957, passed a resolution demanding full regional autonomy in all subjects except defence, foreign affairs and currency. The motion provoked strong criticism in Karachi. Although the motion was moved by his own party (Awami-League), Prime Minister Suhrawardy, dismissing it as a "political stunt" said that "if anyone forces it we shall resist it."⁶³ Another member of the Awami-League, A. R. Tarkabagesh said that the people of East Pakistan had absolutely nothing to do with these 'disruptive forces' and they stood solidly for the integrity and solidarity of Pakistan.⁶⁴ Mr. Ata-ur-Rahman, an Awami League leader who had encouraged the passage of the resolution in the Assembly, remarked that he "would be no party to any move designed to weaken the centre", and that he "would like to have maximum regional autonomy without in any way weakening the Central Government".⁶⁵ If one analyses the demand one wonders how it could be accomplished. Without having control over finances, how would the centre carry out its responsibilities for defence? Besides this problem, defence itself is a vast subject and cannot be isolated from communicat-

⁶³DAWN, (Karachi), April 5, 1957, p. 1.

⁶⁴Ibid., p. 8.

⁶⁵Quoted in R. D. Lambert, "Factors in Bengali Regionalism in Pakistan", Far Eastern Survey, April, 1959, p. 58.

ions, broadcasting, etc. The advocates of regional autonomy did not lay down the details as to how their scheme would be implemented. Prime Minister Suhrawardy conceded that East Pakistani leaders themselves did not know what they meant by provincial autonomy.⁶⁶

Different statements quoted in this context show that the forces of regionalism in East Pakistan were contained by the need for national unity which was emphatically stressed by the leaders in their statements. A powerful centre with the help of the elements believing in national integration, did not permit the regional forces to go to the extreme of breaking up the nation.

In West Pakistan a strong centre checked provincialism, which was making headway in the Anti-One Unit movement. The unification of West Pakistan was not accepted whole-heartedly by a number of political leaders, particularly those of the smaller former provinces of Sind and N. W. F. P., who feared the domination of Punjab. The movement to break the One Unit scheme was started by the ruling Republican party and the newly-formed National Awami Party (NAP). This new party stood for undoing the unification of West Pakistan. The ruling Republicans, in a bid to remain in power, supported the NAP on the One Unit issue. As a

⁶⁶DAWN, (Karachi), April 5, 1957, p. 1.

result a resolution was moved by the NAP in the West Pakistan Provincial Assembly calling for the restoration of the former provinces. The Assembly passed the resolution with a vote of 170 of 304 members. The resolution stated that "this Assembly recommends the Government to communicate the views of this Assembly to the National Assembly that the provinces of West Pakistan be reconstituted as a sub-Federation with four or more fully autonomous provinces."⁶⁷ The move was strongly opposed by the Centre. President Mirza ruled out the division of West Pakistan province into four or more linguistic units as recommended by the West Pakistan legislature.⁶⁸ Denouncing the resolution, the president warned that any move aiming at bringing about major changes in the constitution to delay the general election, would not be tolerated. Prime Minister Suhrawardy, criticising the resolution, said that any dismemberment of the One Unit created in 1955 would entail radical constitutional changes and would delay the country's first elections.⁶⁹ This example suggests that the centralizing forces prevailed over the provincial forces and the Central disapproval, as well as inaction, prevented the Provincial Government

⁶⁷DAWN, (Karachi), September 18, 1957, p. 1.

⁶⁸DAWN, (Karachi), September 24, 1957, p. 1.

⁶⁹Ibid.

from undoing the unification of West Pakistan.

Besides a strong central government which unified the country during the troubled years of regional crisis in East Pakistan, the flare up of provincialism in West Pakistan, and East-West differences, the cohesive forces that help to maintain national unity were the Indian threat and common religion.⁷⁰ In time of crisis when national security was at stake, people of both wings, forgetting their internal differences, stood united like a rock. Indian action of diverting the waters of the Sutlaj River through the Bhakra canal produced strong resentment in both wings. In Dawn of July 12 there appeared a joint statement of several ex-ministers of the United Front ministry denouncing Nehru's action in opening the Bhakra canal. Mr. Ata-ur-Rahman, an Awami-League leader, condemning the Bharati action, appealed: "Let our leaders of all shades of opinion forget their internal differences and meet round the table on this vital national issue and forge out a plan to save Pakistan from imminent danger."⁷¹ Mr. Hasimuddin Ahmad, a former United Front minister, warned the Indian Prime Minister, Mr. Nehru, that "if our internal and domestic differences in matters of administration weigh with Mr.

⁷⁰Refer to Chapter I.

⁷¹See Dawn, (Karachi), July 12, 1954, pp. 4-6.

Nehru, in taking this step, he is thoroughly mistaken. . . Irrespective of our own differences and political affiliations the people of Pakistan shall stand united like a rock to vindicate their own rights and liberties."⁷²

In view of the extremists elements in India who still resent partition, it had often been charged that Indian agents and conspirators were working in East Pakistan to undo Pakistan and dislodge its political integrity. The following statement, which appeared in an editorial of the Morning News of February 4, 1957, point out the activities of Indian agents in East Pakistan:

A vigorous campaign has been launched in Bharat to undo Pakistan and re-unite it with Bharat, according to authoritative reports reaching here from Calcutta. A political party, Sri Aurobindo Sevak Sangha which claims that its political programme is based on the "teaching of Sri Aurobindo" is fighting general elections in Bharat with a Programme the first item of which reads: "Annulment of the ill-fated partition and reunification of India." In its election manifesto, which has been widely distributed and even sent to some newspapers in Pakistan, the Party claims that 'there is a party even in Pakistan which is working for re-unification and it is growing in strength'.⁷³

DAWN, in its editorial, also pointed out the presence of subversive elements and Indian agents in the Awami League who were working to undermine the national unity of Pak-

⁷²DAWN, (Karachi), July 13, 1954, p. 8.

⁷³Quoted in R. D. Lambert, op. cit., p. 56.

istan.⁷⁴ Prime Minister Suhrawardy warned the people against "the subversives trying to undermine the integrity of Pakistan at the instance of foreign interests."⁷⁵ Mr. Hamidul-Huq Choudhary of the United Front, pleading for a national approach to the East-West differences said that Pakistan's enemies were working "to absorb East-Pakistan in India". He said: "There are enemies who want us to cease to exist. . . There are people who want us to be subjugated by some other forces from the neighboring countries."⁷⁶ These different statements show the presence of subversive elements in East Pakistan who were trying to disrupt national unity. Linked to this idea of a common enemy was the unanimity of views and common consensus on the Kashmir dispute, which provided an added source of strength to national unity.⁷⁷

⁷⁴DAWN, (Karachi), April 6, 1957, p. 3.

⁷⁵Quoted in R. D. Lambert, op. cit., p. 58.

⁷⁶N. A. P. Debates, Vol. I, No. 3, February 12, 1957, p. 149.

⁷⁷The statement made by Prime Minister Nehru of India on March 30, 1956, that 'all talk of plebiscite in Kashmir was completely beside the point' evoked widespread resentment in Pakistan. Mr. Suhrawardy, the leader of the Opposition in the National Assembly, criticising the statement, said that ". . . Normally, inalienably, Kashmir is a part of Pakistan. . . Kashmir is far more contiguous to Pakistan and the people of Kashmir are more related to the people of Pakistan across the border. . . There should be a fair and free plebiscite in Kashmir." DAWN, (Karachi), April 1, 1956, p. 1; see also for similar statements made by the leaders of East and West Pakistan to condemn Prime Minister Nehru's statement, DAWN, (Karachi), March 31, April 1 and 2, 1956.

Besides the Indian threat, common belief united the culturally, linguistically and geographically diverse people together in moments of national crisis when the forces of separation were working towards disintegration. It is significant that, in moments of national crisis, Muslims unite in the name of Islam, forgetting all their differences. As described earlier, Islam had been a predominant force in bringing the Muslims of India together into a single nation. The Muslim League, in the movement for Pakistan, appealed for unity and support in the name of Islamic solidarity. After independence, also, Islam continued to be a unifying force between the people of the two wings. When faced with an external threat from India or separatist tendencies from East Pakistan, Islam provided an admirable symbol for national solidarity.⁷⁸ Thus, in circumstances when forces of separation seemed to herald a possible breakup of the state, common religion and the Indian threat proved to be the unifying forces. However, between these two integrating forces, fear of India had been greater because India still resents the creation of Pakistan and she is superior in manpower, material and military strength. India regards Pakistan as a challenge to the ideal of a united India which the Congress leaders continue to cherish and fos-

⁷⁸K. B. Sayeed, op. cit., pp. 182-183.

ter.⁷⁹ Commenting on India's attitude to Pakistan, Harrison remarks that "Most Hindus would be satisfied with an acquiescent Pakistan within an Indian sphere of influence, some hope for a confederation, and a vocal few would welcome an excuse to annul Partition by force."⁸⁰

A highly centralized government prevented the separatist tendencies from disrupting national integration. Although it is hard to maintain that one was the cause of the other, that a highly centralized government gave rise to separatist tendencies, or forces of separation made the centre strong to maintain national solidarity, it may be contended that regionalism in East Pakistan was largely a product of economic discontent and as such it needed effective economic steps to remove the existing economic disparity between the two wings. These regional pressures, which were in full swing during 1956-58, might have compelled the centre, in coming years, to take necessary and prompt measures to remove the economic grievances, had the government been allowed to carry on its responsibilities under the constitution. Unfortunately, the constitution which went into effect on March 23, 1956, was abrogated on

⁷⁹G. W. Choudhary, Pakistan's Relations with India, New York: Frederick A. Praeger, Publishers, 1968, p. 89.

⁸⁰S. Harrison, op. cit., p. 319.

October 7, 1958 when the military took over the administration of the country. Two and a half years is too short a period to assess and evaluate conclusively, the federal aspects of the constitution. However, in the light of our previous analysis of legislative, financial and administrative relations between the centre and provinces, it may be said that a highly centralized government was at work during these two and a half years. The provinces were subordinate to, rather than co-ordinate with, the central government. The inclusion of the concurrent list in the constitution might give one an impression at first sight that co-operative federalism might emerge. But looking at the constitutional grant and political exercise of powers by the centre, one can only assert that the provinces were dependent upon the centre in legislative, financial and administrative spheres. This subordination of the provinces to the centre would characterise the government as 'quasi-federal'.

SUMMARY OF THE THESIS AND CONCLUDING REMARKS

The Federal system requires for its successful operation adequate financial resources and skilled administrators.¹ Pakistan lacked both money and skilled man power. Its financial resources were inadequate to meet the immediate problems of security and mass migration. Another serious handicap Pakistan suffered was the lack of civil service personnel to run the administration. Despite these difficulties, federalism was adopted because of the predominance of historical, geographical, cultural and linguistic factors. In a society where desire for unity, fostered by common religion, a fear of common enemy and economic progress necessitated the people to be organised under one general government; geographical, cultural and linguistic differences produced the desire for regional autonomy. These conflicting desires for union and separation determined the choice of federalism.

Federalism is a delicate balance between the conflicting forces of unity and diversity, which rarely remains constant, particularly in a society undergoing

¹Wheare, op. cit., p. 51.

rapid political and economic development.² In Pakistan, too, as has been explained earlier, the conflicting factors, in varying degrees, continued to exert pressure on the working of the system. During the initial years of struggle for survival, national unity, which was most needed for political and economic stability, suffered a setback due to the loss of the dynamic personalities of Quaid-i-Azam Mohammad Ali Jinnah and Liaqat Ali Khan, and the disintegration of the Muslim League. Provincialism made its headway. Geographical, cultural and linguistic differences became dominant. Their dominance was apparent in the constitutional controversies over the problems of language, representation and division of powers.³ The recognition of the Bengali language as one of the two official languages, vesting of residual powers in the provinces, a comprehensive provincial list including Railways and Industry in the constitution of 1956 show the influence of regional forces. One can see similar regional pressures during the period 1956-58, when a movement for provincial autonomy gained momentum in East Pakistan and the Anti-One Unit campaign was launched in West Pakistan. Although regional forces were strong enough to obtain concessions from the centre,

²Watts, op. cit., p. 103.

³See Chapter IV.

they were not strong enough to overthrow or disturb the federal principles which had been established. As described earlier, central intervention prevented the forces of diversity from becoming sufficiently strong to break-up the nation.

The unifying role of the C. S. P. in maintaining national unity cannot be overlooked. Pointing out the stabilizing role of the Civil Service, B. Geoffery remarked "I often wonder which was more true; that the idea of an all-Pakistan service such as the C. S. P. helps to unite Pakistan, or the idea of Pakistan helps to unite the service."⁴ The sense of military insecurity and Islamic solidarity continued, during the period of national crisis, to provide an additional stimulus for national unity. Fear of Indian domination and the fervour of Islam proved too strong to be overpowered by the forces of diversity. In the presence of geographical, cultural and linguistic differences; unity of religion, Islam and the unity of a fear of political and economic domination by India coupled with a powerful central government united the diverse elements into one nation.

Federalism requires a distribution of authority between one general and several regional governments. In the classical model, powers are so divided and the sphere

⁴B. Geoffery, "The Pakistan Civil Service," The Listener, Sept. 19, 1957, p. 420.

of each government so specified by the constitution as to ensure that neither level of government is subordinate to the other. If the general government is dependent upon the regional, then the government would be a confederation. On the other hand, subordination of regional government to the general government would be a violation of, or departure from, the federal principle. Despite the differences between the advocates of 'dual' and 'co-operative' federalism on the nature of the relations between the central and regional governments, there is a general consensus between the two that neither government should be subordinate to the other.⁵ The maintenance of co-ordinate status of both levels of government depends upon three conditions. The first is that each government should possess adequate control of its financial resources to carry out its constitutional obligations.⁶ The second is that neither should have a power to interfere in, or determine the decisions of, the other. Each can influence or bargain with, and persuade the other.⁷ Thirdly, neither government should have a unilateral right to alter or amend the constitutional division of powers.⁸

⁵Refer to Chapter I.

⁶Wheare, op. cit., Chapter VI.

⁷Vile, op. cit., p. 199.

⁸Wheare, op. cit., p. 55.

The preceding analysis of central-provincial relations shows that the federal principle was only partially incorporated in the constitution. Financial dependence of the provinces on the centre and central interference in provincial matters violated the federal principle. This study suggests that a highly centralized government was at work during the period 1947-1958. The question is how much centralization was the result of the constitutional grant of powers and how much was due to the political exercise of powers by the centre.

Wheare points out that there is a general tendency in all federations (Western) to increase the power and strength of the central government, due to war and economic depression.⁹ M. Belloff considers the extension of state activities, particularly in the social welfare field, responsible for the centralizing tendency in the new federations.¹⁰ In Pakistan, growing centralization had been the result of various factors: history, prevailing circumstances in the initial years, constitutional grant and exercise of power by the centre.

Pakistan inherited a strong central government which was powerful enough to interfere in the provincial matters. The Government of India Act, 1935, which became

⁹Wheare, op. cit., pp. 238-239.

¹⁰M. Belloff, op. cit., p. 127.

the interim constitution of Pakistan had provided for a strong centre which could control the provinces in legislative, financial and administrative spheres.

The powers of the central government were not only retained but increased in later years, because the existing circumstances necessitated a powerful centre. Pakistan, in its early years of struggle for survival, confronted with serious problems of security and defence against India, mass migration of 600,000 Muslims, shattered economy, and disorganized administration was desperately in need of a strong central government which could take unified and concerted action to cope with the situation. The prevailing circumstances thus contributed to the increase of central power.

The growth of the centre in importance was also the result of the acquisition of new fields of jurisdiction through adaptations and amendments to the Interim Constitution. Financial difficulties of the centre in the initial years caused by the mass migration and additional defence expenditure made it necessary to modify the Government of India Act, 1935. The transfer of provincial sources of revenues such as the sales tax and succession duties to the central legislative list and the suspension of shared income tax revenues with the provinces show the increase of central power in financial sphere.

Mass migration and the provincial reluctance to absorb the refugees compelled the centre to make use of its emergency power under section 102. Similarly, the complete breakdown of law and order in Punjab (1953) and Bengal (1954) was the cause of the imposition of central rule under section 92A. Despite the fact the country had a parliamentary form of government, the Governor-General, Ghulam Mohammad, was a powerful figure in the country's politics. His active political role is evident from the dismissal of Prime Minister Khawaja Nazimuddin in 1953 and the dissolution of the first Constituent Assembly in 1954.

Judged in the light of the criteria given in the first chapter, it may be said that the Government of Pakistan under the interim constitution was quasi-federal in law and in action: central predominance in legislative field; administrative control of the provinces by direct means under constitutional provisions (Sections 122 & 51) and indirect legislation (PRODA); frequent use of Section 92A; financial dependency of the provinces; and vesting of residuary powers in the Governor-General characterize the government as quasi-federal.

While determining the character of a government, one should look at the political and economic situation of the country within which the constitution has to work. Keeping in view the situation of the country, it may be

said the quasi-federal nature of the government was the inevitable result of prevailing circumstances.

The working of the federal system under the interim constitution had its repercussions on constitution making. In view of the record of central interference in provincial matters, provincialists demanded the curtailment of central power of intervention in provincial matters. Under regional pressure, the new constitution gave the provinces considerable responsibilities which they did not enjoy under the interim constitution. This increased grant of powers to the provinces which was more apparent than real, was used by the central government as a defence against the demand for provincial autonomy. Mr. Suhrawardy and Mr. Chundrigar both, replying to the provincialists, asserted that the constitution had granted sufficient autonomy and any further grant would amount to disintegration. Similarly President Mirza, rejecting the demand, said that any further regional autonomy would "mean the complete dismemberment of Pakistan".¹¹ Apparently, the provincial powers were enhanced but in reality, the central government still retained its former legislative and administrative control by which it frequently intervened in provincial affairs.

The practice of the central government further nullified the federal features of the constitution. De-

¹¹London Times, May 13, 1957, p. 11.

spite the fact that police and railways were made provincial subjects, they continued to be managed by the central government. Similarly, no step was taken as required by Article 188 to set up the National Finance Commission. Politically and administratively, the provinces were not free from central interference. The centre brought pressure on provincial politics through various direct and indirect means. The governor, in fact, was an agent of the centre and as such he had to perform his duties in accordance with the central government's wishes. Control of provincial matters by the use of Section 193 was frequent. Within a brief period of two and a half years, President's rule was imposed three times in different provinces.

Provincial autonomy further suffered by the dominance of the Central Civil Service. Describing the centralizing role of the Civil Service, K. B. Sayeed said that the federal principle was almost completely set at nought by the centralizing role of the civil service of Pakistan.¹² Similarly in matters of finance, provincial dependency upon the centre is visible from the amount borrowed from the centre. Provinces with limited financial resources had to depend heavily upon loans which were granted at the discretion of the Centre.¹³

¹²K. B. Sayeed, Pakistan The Formative Phase, Karachi: Pakistan Publishing House, 1960, p. 395.

¹³See Chapter V.

Another instrument of central interference was the political party. Until 1954 Muslim League was the ruling party both at the centre and provinces. Liaquat Ali Khan, Nazimuddin and Mohammad Ali Bogra, successively, were Presidents of the Muslim League. They were in a position to supervise and control provincial affairs through the Provincial Muslim League. During 1956-58, no stable majority party existed in the National Assembly. The four successive governments formed at the centre during the two and a half years period, were coalition governments. Consequently, the President emerged as a powerful figure in the country's politics. Once elected to the office, the President was free to support any party that suited his purpose. He had his own supporters in the political parties; for example in Republican and Krishak Saramik.¹⁴ The creation and survival of the Republican party is an example of the power and influence the President had in the West Pakistan politics. Thus, the prevalence of a politically active President at the centre also contributed to the growth of central power.

In the final analysis, it may be said that the provinces were subordinate to, rather than co-ordinate with, the central government. Frequent central interference in provincial politics through governor and party

¹⁴M. Ahmad, op. cit., p. 179.

politics, resort to the emergency provisions (Article 193), role of a politically active President at the centre and the dominance of C. S. P. are the factors that undermine the federal principle. Applying the previous criteria, the government under the constitution of 1956 may be termed as quasi-federal.

The general experience of less than a decade of the working of federation in Pakistan suggests that federal government in developing countries, particularly those which were previously under the colonial rule, will tend to be centralized, because of the prevalence of economic and military factors. The need for swift, economic progress, which was ignored by the past colonial rulers, and the desire to preserve independence of the country, will lead to the increase of powers of central government. Even if the co-ordinate status of general and regional governments is ensured by the constitution, the economic and military pressures will encourage the tendency towards centralization. Centralization may be the result of the acquisition of new fields of jurisdiction or the political exercise of powers by the centre as was the case in Pakistan. If such will be the tendency, if powers are ultimately to be concentrated in the centre, then why bother about federation, why not adopt unitary government which is less expensive in human and economic resources. The answer lies in the presence of conflicting pressures of unity and diversity which

could be contained in a federation, and which make the federal government the only viable government to reconcile the forces of separation and integration.

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